

E. ERIC WILSON BARTON #02820

Document 1-22

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P.O. Box 5246 CSATF/SP-CI-1321

CORCORAN, CALIFORNIA 93212

IN PRO PER

EXHIBIT "D" PAGE ~~5115~~ ^{END} 1-101

R.T. EXCERPTS; 0132, 0133, 103, 104, 105,
106, 107, 150, 173, 323, 324, 325, 326, 327, 328,
161, 0073, 153, 154, 164, 165, 166, 330, 331, 0026

U.S. Cal 1963 Evidence seized during unlawful search cannot constitute proof against conviction of search, and exclusionary prohibition extends to indirect as well as to direct products of such invasions. *Wong Sun v. U.S.* 83 S.Ct 407 0132

U.S. Cal 1963 Verbal evidence which derives immediately from unlawful entry and unauthorized arrest is no less the "fruit" of official illegality than more common tangible fruits of unwarranted intrusion and 4th amendt. may protect against overhearing of verbal statements as well as against more traditional seizure of papers and effects. Fed. Rules. Crim. Proc. rules 3, 4, 18 U.S.C.A.; U.S.C.A. Const. amend. 4 *Wong Sun* 83 S.Ct

U.S. Cal 1963 Test of excludability is not whether evidence would not have come to light but for illegal action of police but whether evidence was come at by exploitation of illegality rather than by means sufficiently distinguishable to be purged of primary taint. *Wong Sun*.

U.S. Cal 1963 Narcotics found in home of another person after illegally arrested defendant denied selling narcotics but told arresting officers that such person had been selling narcotics were come by exploitation of illegality and could not be used against defendant. *Wong Sun*, U.S. 83 S.Ct. Police officer is permitted to arrest without warrant if misdemeanor or felony is committed in officers presence. *Highbee v. City of San Diego*, 911 F.2d 377

Ca Cal 1997 Proximity between home and area purportedly within curtilage protected by fourth amendment is not determinative, as there is no fixed distance at which curtilage begins or ends. U.S. C.A. Amend 4 U.S. v. Solis 179 F.3d 499. Ca Cal 1997 Fourth Amendment protects curtilage of home and extent curtilage is determined by whether individual may reasonably expect that area in question should be treated as home itself. U.S.C.A. Amendment 4 U.S. v. Solis 179 F.3d 499.



argument cont

0133

Ca Cal 2004 Under the traditional rule probable cause exist when there is fair probability or substantial chance of criminal activity, the Court of appeals looks at the total circumstances known to the officer to determine whether probable cause existed U.S.C.A. Const. Amend. 4 U.S.V. Brink, 367 F.3d 1128.

Ca 9 Cal 2003 Police Officer may not solely rely on claim of citizen witness that he was victim of crime to establish probable cause for arrest, but must independently investigate basis for victim's knowledge or interview other witnesses. sufficient basis of knowledge is established if victim provides facts sufficiently detailed to cause reasonable person to believe crime has been committed and named suspect was perpetrator

Peng V. Mei Chin Peng, 335 F.2d 100, 101 U.S. Const. 4th

Ca 9 Cal 1974 - Evidence obtained in search incident to arrest under unconstitutional vagrancy ordinance should have been excluded at murder trial where state did not demonstrate beyond a reasonable doubt that admission of the ^{ALLEGED} murder weapon which was unlawfully seized did not contribute to the conviction. Powell V. Stone 507 F.2d 93 certiorari granted.

Ca. Cal 1993 Evidence which was fruit of illegal arrest was inadmissible against arrested person U.S.V. Connolly 479 F.2d 930 Certiorari dismissed 945 Ct. 248, 414 ^{ALLEGED} Use of confessions as denying due process (1942) 15 S. CAL L. REV 233

2

1 THE COURT: ALL RIGHT. MY TENTATIVE IS AS
2 FOLLOWS: ~~_____~~

3 ~~_____~~
4 ~~_____~~ AND THE TENTATIVE IS BASED
5 UPON THE AUTOMOBILE EXCEPTION TO THE FOURTH AMENDMENT. MY
6 TENTATIVE IS FURTHER TO GRANT THE MOTION TO SUPPRESS
7 EVIDENCE FROM APARTMENT NO. 5, CONCLUDING THAT THE PEOPLE,
8 AFTER A FULL CONSIDERATION AND REVIEW OF THE EVIDENCE
9 PRESENTED, HAVE NOT MET THEIR BURDEN OF DEMONSTRATING TO THE
10 COURT'S SATISFACTION THAT THE ENTRY, SEARCH AND SEIZURE OF
11 ITEMS WITHIN THE APARTMENT WAS DONE PURSUANT TO A CONSENT
12 RENDERED BY MR. BURTON.

13 I UNDERSTAND THERE'S CERTAIN OTHER ITEMS THAT
14 MR. BURTON WOULD LIKE SUPPRESSED FLOWING FROM HIS ARREST.
15 ~~_____~~ THE ONLY ITEMS
16 THAT I'M TALKING ABOUT AS SUPPRESSING ARE WHATEVER WAS FOUND
17 IN OR DERIVED FROM APARTMENT NO. 5, PERIOD.

18 MR. ADAIR -- WELL, MISS HANNAH, YOU'VE GOT THE
19 LABORING OAR ON THE MOTION SINCE THIS WAS A WARRANTLESS
20 SEARCH, MINDFUL OF THE COURT'S TENTATIVE, DO YOU WISH TO BE
21 HEARD?

22 MS. HANNAH: I DO, YOUR HONOR.

23 YOUR HONOR, REPRESENTING THIS POINT, ~~_____~~
24 ~~_____~~, THE POLICE OFFICERS TESTIFIED AFTER
25 TAKING THE DEFENDANT INTO CUSTODY THAT THEY APPROACHED HIM,

26 ~~_____~~

27 THE COURT: ~~_____~~
28 TOOK HIM DOWN, ~~_____~~. THERE WAS NO

1 CONVERSATION, TESTIMONY OF A CONVERSATION AT THE PATROL
2 VEHICLE ABOUT A CONSENT TO SEARCH. AND THE WAY I VIEW IT IS
3 THAT THE COPS DON'T HAVE THEIR ACT TOGETHER, AND HOWEVER IT
4 WENT DOWN, THEY EITHER HAVE A VERY POOR RECOLLECTION OR
5 FAILURE OF RECOLLECTION. AND I DO NOT CONCLUDE FROM THE
6 TESTIMONY OF MR. HELSEL THAT THERE WAS CONSENT NECESSARILY
7 GIVEN BY MR. BURTON DURING WHAT MR. HELSEL DESCRIBED AS A
8 DIALOGUE AT THE PATROL VEHICLE THAT HE WAS NOT IN A POSITION
9 TO HEAR. THE TESTIMONY OF AGENT KIRK WAS CLEARLY THAT THE
10 PURPORTED CONSENT TO SEARCH WAS GIVEN BY MR. BURTON RIGHT
11 THERE IN THE PARKING LOT BEFORE HE WAS EVER ESCORTED TO THE
12 PATROL VEHICLE. AND BASED UPON THE TESTIMONY OF OFFICER
13 HOLMES, ~~MR. HELSEL~~, I'M SATISFIED
14 IT DIDN'T GO DOWN THAT WAY.

15 MS. HANNAH: YOUR HONOR, AGENT KIRK INDICATED
16 ~~THAT HE DID ASK FOR PERMISSION AT THE SCENE, AT THE~~
17 ~~SCENE DURING THE OCCURRENCE. MR. HELSEL.~~

18 THE COURT: YOU'VE GOT TO READ THIS IN CONTEXT
19 AND VIEW IT IN CONTEXT. I'VE REVIEWED THE TRANSCRIPT AND
20 I'VE REVIEWED MY DETAILED NOTES.

21 MS. HANNAH: ~~MR. HELSEL'S TESTIMONY~~

23 ~~OTHER THAN THAT.~~ I MEAN, IT DOESN'T CONTRADICT THE
24 TESTIMONY OF AGENT KIRK THAT HE ASKED FOR PERMISSION AT THE
25 LOCATION. NONE OF THE TESTIMONY AND THE CIRCUMSTANCES
26 CONTRADICT THE TESTIMONY OF AN OFFICER THAT THEY ~~SAID~~ --
27 ~~THAT THEY~~, THEY TOOK HIM INTO CUSTODY, THEY PUT HIM
28 INTO HANDCUFFS. ~~THEY~~

1 ~~HEM WHEN AGENT NICK ARRIVED, THAT HE EXPECTED THAT~~

2 ~~THEY WERE GOING TO BE THERE FOR A LONG TIME.~~

3 ALL OF THOSE THINGS -- ~~BECAUSE OF THE TESTIMONY CONFLICTS~~

4 ~~WITH~~

5 ~~THE COURT: THERE IS DISPER.~~

~~THE COURT: THERE IS DISPER.~~

~~THE COURT: THERE IS DISPER.~~

~~THE COURT: THERE IS DISPER.~~

~~THE COURT: THERE IS DISPER.~~

~~THE COURT: THERE IS DISPER.~~

~~THE COURT: THERE IS DISPER.~~

~~THE COURT: THERE IS DISPER.~~

~~THE COURT: THERE IS DISPER.~~

~~THE COURT: THERE IS DISPER.~~

15 THE COURT: I'M NOT SATISFIED THERE WAS A

16 CONSENT, WHETHER FREE OR VOLUNTARY OR OTHERWISE. THAT'S MY

17 POINT. THE EVIDENCE DOESN'T COME TOGETHER TO CLEANLY

18 SUPPORT YOUR ARGUMENT OR HOW THIS WENT DOWN.

19 MS. HANNAH: YOUR HONOR, ~~THE COURT: THERE IS DISPER.~~

~~THE COURT: THERE IS DISPER.~~

~~THE COURT: THERE IS DISPER.~~

~~THE COURT: THERE IS DISPER.~~

23 CIRCUMSTANCES --

24 THE COURT: NO, ~~THE COURT: THERE IS DISPER.~~ AS I UNDERSTAND IT,

25 MR. ADAIR, ARE YOU CONCEDING THERE WAS A CONSENT GIVEN AND

26 THE ONLY ISSUE IS THE VOLUNTARINESS OF THE CONSENT?

27 MR. ADAIR: NO, YOUR HONOR. WE'RE SAYING THAT

28 HE NEVER CONSENTED.

~~THE COURT: THERE IS DISPER.~~ (5)

1 THE COURT: PERIOD.

2 MS. HANNAH: YOUR HONOR, AGENT KIRK HAS
3 TESTIFIED THAT --

4 THE COURT: I'M MINDFUL OF AGENT KIRK'S
5 TESTIMONY.

6 MS. HANNAH: AND THE CIRCUMSTANCE AND EVEN THE
7 SURROUNDING CIRCUMSTANCES WITH THE PEOPLE'S WITNESSES AND

8 ~~THE COURT: I'M MINDFUL OF AGENT KIRK'S~~

9 THE COURT: I'VE LOOKED AT ALL OF IT. I'M NOT
10 PERSUADED.

11 MR. ADAIR, YOU WISH TO BE HEARD?

12 MR. ADAIR: NO, YOUR HONOR. WE'LL SUBMIT.

13 THE COURT: THE MOTION TO SUPPRESS IS GRANTED IN
14 PART FOR THE REASONS OUTLINED BY THE COURT. THE MOTION TO
15 SUPPRESS ITEMS FROM THE VEHICLE IS DENIED, NOT BASED UPON A
16 PURPORTED THEORY OF CONSENT, BUT RATHER BASED UPON THE
17 AUTOMOBILE EXCEPTION TO THE 4TH AMENDMENT. THE MOTION TO
18 SUPPRESS IS GRANTED, BUT LIMITED, AS I'VE SAID, TO ITEMS

19 ~~THE COURT: I'M MINDFUL OF AGENT KIRK'S~~

20 DERIVED FROM A LAW ENFORCEMENT ENTRY AND SEARCH OF UNIT 5,
21 THAT BEING SHOWN BY THE EVIDENCE TO BE MR. BURTON'S
22 APARTMENT, AS TO WHICH RESIDENCE, OF COURSE, HE HAD STANDING
23 UNDER THE 4TH AMENDMENT TO OBJECT PRESENTLY TO THE SEARCH
24 THEREOF AND THE SEIZURE OF ITEMS THEREFROM.

25 THIS CASE REMAINS ON THE TRIAL CALENDAR NEXT
26 DOOR ON MONDAY, MARCH 14TH. IF THERE'S NOT A READINESS
27 CONFERENCE ALREADY SET IN THE INTERIM, I'M GOING TO SET ONE
28 PRESENTLY. AND, MR. ADAIR, I LEAVE THAT TO YOUR DISCRETION

1 AS TO SELECTING A DATE, MONDAY, TUESDAY OR WEDNESDAY MORNING
2 AT 9:30 BETWEEN NOW AND THE TRIAL DATE.

3 MR. ADAIR: YOUR HONOR, I WOULD SUGGEST THE WEEK
4 OF MARCH 7TH. THE BEST DAY FOR ME WOULD BE THE 9TH, BUT I
5 KNOW MISS HANNAH HAS A NUMBER OF THINGS SCHEDULED, SO
6 REQUEST SOMETHING THAT'S CONVENIENT TO HER ALSO.

7 THE COURT: MISS HANNAH.

8 MS. HANNAH: YOUR HONOR, I HAVE EITHER THE 7TH
9 OR THE 8TH. I WILL NOT BE AVAILABLE THE 9TH, 10TH OR 11TH.

10 THE COURT: CAN YOU SQUEEZE IT ON THE 7TH OR
11 8TH, MR. ADAIR?

12 MR. ADAIR: THE 7TH IS PROBABLY THE WORST. I
13 HAVE SOMETHING IN FEDERAL COURT THE MORNING OF THE 8TH.
14 I'LL SEE WHAT I CAN DO ABOUT CHANGING IT.

15 THE COURT: LET'S SET IT FOR MARCH 8TH, TUESDAY,
16 AT 9:30 IN DEPARTMENT 11 FOR READINESS CONFERENCE WITH THE
17 UNDERSTANDING THAT IF YOU GET HUNG UP OR DELAYED IN FEDERAL
18 COURT, JUST GIVE DEPARTMENT 11 A CALL. I'M SURE THEY'LL
19 TRAIL IT TO YOUR CONVENIENCE.

20 MR. ADAIR: THAT'S FINE, YOUR HONOR. APPRECIATE
21 IT. THANK YOU.

22 THE COURT: THANK YOU.

23 ---

24

25

26

27

28

1 BECAUSE -- CAN I HAVE A MOMENT, YOUR HONOR? *The challenge is not made.*

2 THE COURT: SURE.

3 MR. ADAIR: WE'RE REQUESTING THE CASE BE DISMISSED AS THE
4 FACTS OF THE CASE HAVE NOT BEEN SUBSTANTIATED -- THE CHARGES
5 HAVE NOT BEEN SUBSTANTIATED BY THE FACTS OF THE CASE. *Error and should be considered as such.*

6 THE COURT: WELL, AS TO THAT MOTION, OF COURSE, WE ALREADY
7 HAVE THE 995 MOTION. AND THAT WAS DENIED. AND THAT WAS BASED
8 ON THE EVIDENCE AT THE PRELIMINARY HEARING. AND THE NEXT STAGE
9 FOR THE COURT TO CONSIDER -- ACTUALLY, THAT'S WHY WE HAVE THE
10 TRIAL, TO DETERMINE IF THERE'S SUFFICIENT EVIDENCE TO PROVE THE
11 CASE BEYOND A REASONABLE DOUBT. *Improperly denied as the transcript of the 1526.5 becomes the transcript after suppression motion is made.*

12 SO THE COURT WILL NOT GRANT THE MOTION TO DISMISS,
13 BUT THAT'S THE PURPOSE OF HAVING A JURY TRIAL. THEY WILL MAKE
14 THE DETERMINATION. *TAKE IRRATIONAL TRIAL OF FACT.*

15 WITH REGARD TO THE OTHER ISSUE OF THE WITNESS, I'M
16 LOOKING AT THE PRELIM AND I SEE THAT THE COURT -- DEFENSE RAISED
17 A MOTION TO EXCLUDE WITNESSES, THAT THE COURT ASKED THE
18 WITNESSES IN THE COURTROOM TO BE IDENTIFIED. MS. SANDERS WAS
19 IDENTIFIED AND HER DAUGHTER DREONA, AS WELL AS OTHERS. AND THE
20 COURT ASKED THEM TO ALL STEP OUT IN THE HALL.

21 SO IT APPEARS, AT LEAST AS OF PAGE 3 OF THE PRELIM;
22 THAT THE WITNESS WAS INSTRUCTED TO STEP OUT IN THE HALL. I
23 DON'T HAVE ANY EVIDENCE AS TO WHETHER SHE EVER CAME BACK INTO
24 THE COURTROOM. NOTHING -- UNLESS SOMEONE POINTS ME TO A PAGE IN
25 THE PRELIM WHERE THAT'S REFLECTED. IF NOT, THEN I DON'T HAVE
26 ANY EVIDENCE OF THAT. BUT EVEN IF SHE DID, THE -- NUMBER ONE,
27 SHE WAS IDENTIFIED TO EVERYONE AT THE OUTSET. SO IT WOULD HAVE
28 BEEN INCUMBENT UPON COUNSEL TO CALL IT TO THE COURT'S.

But then she

§

1 DENY IT AGAIN.

2 **MR. ADAIR:** COULD I HAVE A MOMENT, YOUR HONOR?

3 **THE COURT:** YES.

4 (COUNSEL AND THE DEFENDANT CONFER.)

5 **MR. ADAIR:** I GUESS A FURTHER TROMBETTA MOTION

6 ~~IN THAT MR. BURTON'S CELL PHONE IS BEING FOR~~

7 ~~REVIEWED TO SEE IF IT WAS PROBABLY ON BURTON'S~~

8 ~~PERSONAL PHONE, AND IF SO, IT WOULD BE A FURTHER TROMBETTA MOTION~~

9 ~~TO SEE IF IT WAS PROBABLY ON BURTON'S PERSONAL PHONE~~

10 ~~HE WAS DOING OTHER THINGS;~~

11 ~~HE WAS DOING OTHER THINGS;~~

12 ~~HE WAS DOING OTHER THINGS;~~

13 **THE COURT:** ALL RIGHT. ANY RESPONSE TO THAT?

14 ~~HE WAS DOING OTHER THINGS;~~

15 ~~HE WAS DOING OTHER THINGS;~~

16 ~~HE WAS DOING OTHER THINGS;~~

17 ~~HE WAS DOING OTHER THINGS;~~

18 **MR. TROCHA:** I MEAN, ~~HE WAS DOING OTHER THINGS;~~

19 CELL PHONE, I DON'T KNOW. BUT I VIEWED THE EVIDENCE

20 ~~HE WAS DOING OTHER THINGS;~~

21 ~~HE WAS DOING OTHER THINGS;~~

22 **MR. ADAIR:** IS THIS THE CELL PHONE THAT

23 BELONGED TO MR. BURTON?

24 **MR. TROCHA:** I DON'T KNOW WHO IT BELONGED TO.

25 ~~HE WAS DOING OTHER THINGS;~~

26 **THE COURT:** OKAY. ~~HE WAS DOING OTHER THINGS;~~

27 ~~HE WAS DOING OTHER THINGS;~~ AND I DON'T HAVE SUFFICIENT EVIDENCE AT THIS

28 POINT -- PARTICULARLY UNDER A TROMBETTA MOTION -- SO

~~HE WAS DOING OTHER THINGS;~~

9

1 THAT MOTION IS DENIED.

2 (COUNSEL AND THE DEFENDANT CONFER.)

3 MR. ADAIR: THERE IS ONE OTHER WITNESS

4 APPARENTLY, ACCORDING TO MR. BURTON, [REDACTED]

5 [REDACTED] AND THAT'S A BARBARA SAVAGLIO, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9 IS S-A-V-A-G-L-I-O.

10 THE COURT: MS. SAVAGLIO. ALL RIGHT. THANK

11 YOU.

12 THEN DOES THAT CONCLUDE THE MOTIONS THAT WE
13 NEED TO HEAR AT THIS TIME?

14 MR. ADAIR: AS I HAD STATED EARLIER -- I THINK
15 IT WAS IN CHAMBERS -- CONCERNING THE SEARCH OF THE CAR,

16 [REDACTED]

17 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

20 NOW, I THINK WE RAISED THOSE IN FRONT OF JUDGE

21 PRECKEL WAY BACK IN FEBRUARY OR WHATEVER IT WAS. HE

22 DENIED THE SUPPRESSION MOTION CONCERNING THE CAR. I

23 THINK HE INCLUDED THE BACKPACK. I'M NOT SURE. BUT

24 BASED UPON AN "AUTOMOBILE EXCEPTION," AS HE STATED.

25 I'D LIKE TO RENEW THAT SUPPRESSION MOTION AND
[REDACTED]

27 WOULD POINT OUT THAT I THINK THE DEFENSE MAY BE

28 RAISING -- EITHER PRESENTING THE PHOTOGRAPHS OF THE

10

[REDACTED]

10 **THE COURT:** AND I HAVE -- LOOKING THROUGH THE
11 RECORD HERE, I'VE GOT THE PRELIM TRANSCRIPT AND
12 TRANSCRIPTS FROM JANUARY 28TH. IT LOOKS LIKE THEN JUDGE
13 PRECKEL RULED ON FEBRUARY 24TH, MADE HIS FINAL RULING ON
14 THE MOTION. SPECIFICALLY SAYS HE "GRANTED AS TO
15 EVIDENCE OBTAINED IN DEPARTMENT 5, DENIED AS TO ANY
16 ITEMS OBTAINED FROM THE VEHICLE." I WOULD THINK IF THE
17 BACKPACK WAS ON TOP OF THE VEHICLE, THAT INCLUDED THE
18 BACKPACK.

[REDACTED]

22 **THE COURT:** ALL RIGHT. AND WHAT'S YOUR
23 RESPONSE, MR. TROCHA?

24 **MR. TROCHA:** YOUR HONOR, I'D RELY ON JUDGE
25 PRECKEL'S RULING. [REDACTED]

[REDACTED]



[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
MR. TROCHA: [REDACTED]
[REDACTED]

7. TOOK PICTURES OF THE CAR AS IT WAS AT THE SCENE AT HIS
8 HOUSE; TOWED THE CAR BACK TO THE EL CAJON POLICE
9 DEPARTMENT, AND TOOK PICTURES THERE.

10 **MR. ADAIR:** PERHAPS TO SUPPLEMENT THE RECORD,
11 AT THE TIME OF THE SUPPRESSION MOTION, WE DID NOT HAVE
12 PHOTOGRAPHS. [REDACTED]

13 [REDACTED] THERE IS A PHOTOGRAPH
14 OF MR. BURTON'S CAR AS IT'S PARKED DIRECTLY IN FRONT OF
15 HIS UNIT.

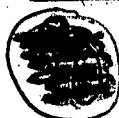
16 IT'S OUR POSITION THAT THE CAR WAS PART OF THE
17 CURTILAGE OF MR. BURTON'S RESIDENCE AND COULD NOT BE
18 SEARCHED WITHOUT A SEARCH WARRANT.

19 **THE COURT:** AND WHERE WAS IT PARKED EXACTLY?

20 **MR. ADAIR:** IT WAS PARKED APPARENTLY DIRECTLY
21 IN FRONT OF HIS UNIT. I THINK THAT'S WHAT THE
22 PHOTOGRAPH WOULD SHOW. [REDACTED]

23 **THE COURT:** IF YOU WANT TO SUBMIT THE
24 PHOTOGRAPHS FOR THE RECORD, YOU MAY DO THAT.

25 (MR. ADAIR REVIEWS THE PHOTOGRAPHS.)
[REDACTED]
[REDACTED]
[REDACTED]



2 MR. ADAIR: YES, YOUR HONOR. THANK YOU.

3 THE COURT: ALL RIGHT. [REDACTED]

4 [REDACTED] PHOTO OF DEFENDANT'S
5 VEHICLE, WAS MARKED FOR IDENTIFICATION.)

6 MR. ADAIR: COULD I EXPLAIN THE PICTURE?
[REDACTED]

9 THE COURT: DID YOU SHOW IT TO MR. TROCHA?

10 MR. TROCHA: I'VE SEEN THE PICTURE, YOUR
11 HONOR.

12 THE COURT: ALL RIGHT. IF YOU WANT TO EXPLAIN
13 FOR THE RECORD, WHAT IT DEPICTS AND WHAT WOULD BE
[REDACTED]

15 MR. ADAIR: I THINK WE CAN STIPULATE FACTS
[REDACTED]

17 MR. TROCHA: IT'S ESSENTIALLY DEFENDANT'S CAR
18 PARKED IN HIS PARKING SPACE. IT'S PROPERTY OF THE
19 APARTMENT COMPLEX HE LIVES IN.

20 MR. ADAIR: DIRECTLY ON THE OTHER SIDE OF THE
21 CAR -- [REDACTED]

22 -- IS MR. BURTON'S APARTMENT UNIT, WHICH WOULD BE
23 SEEN OVER THE HOOD -- OVER THE TOP OF THE CAR. AND THE
[REDACTED]

25 CORRESPONDS, I BELIEVE, TO HIS UNIT.
[REDACTED]
[REDACTED]
[REDACTED]

1 BELIEVE THE MANAGER HAD TESTIFIED AT THE HEARING THAT HE
2 WAS STANDING THERE IN FRONT OF HIS UNIT WITHIN A COUPLE
3 OF FEET OF THE DOOR WHEN THE -- WITH MR. BURTON AT THE
4 TIME THE POLICE ARRIVED.

6 FRONT OF THE MANAGER'S UNIT. THE CAR WAS PARKED IN
7 MR. BURTON'S SPACE, [REDACTED]
8 IN FRONT OF MR. BURTON'S APARTMENT. AND IT'S OUR
9 CONTENTION, THAT MR. BURTON WAS NOT IN CONTACT WITH THE
10 CAR. THE CAR IS PARKED IN THE CURTILAGE OF MR. BURTON'S
11 APARTMENT AND NEEDED A SEARCH WARRANT TO BE SEARCHED.

12 THE COURT: ALL RIGHT. WELL, I THINK THE
13 FIRST ISSUE TO ADDRESS WOULD BE TIMELINESS OF THE MOTION
14 IN RAISING IT AT TRIAL. IT APPEARS THAT UNDER
15 1538.5(H), DEFENSE MAY BRING A RENEWAL OF A MOTION AT
16 TRIAL IF NO OPPORTUNITY FOR THE MOTION EXISTED BEFORE
17 TRIAL OR IF THE DEFENSE WAS PREVIOUSLY UNAWARE OF THE
18 GROUNDS OF THE MOTION.

19 I DON'T THINK THAT EXISTS HERE. THE
20 PHOTOGRAPH CERTAINLY EXISTED PRIOR TO -- BETWEEN THE
21 TIME OF JUDGE PRECKEL'S RULING AND TODAY. AND I DON'T
22 THINK THERE'S ANY PARTICULAR REASON EITHER THAT I'M
23 HEARING WHY A PHOTOGRAPH COULDN'T HAVE BEEN PREPARED AND
24 PRESENTED TO JUDGE PRECKEL. I BELIEVE THAT THAT
25 PARTICULAR MOTION WAS CONTINUED A COUPLE OF TIMES OR
26 TRAILED OVER VARIOUS DAYS.

27 SO UNLESS I AM PRESENTED WITH A REASON WHY
28 THIS FALLS WITHIN SUBDIVISION H, I DON'T THINK



10 MS. HANNAH: ACTUALLY, YOUR HONOR, BEFORE WE -- I DIDN'T
11 WRITE THIS MOTION BECAUSE I ACTUALLY STRUGGLED WITH IT. THE
12 COURT IS AWARE THAT THERE WAS A 1538. AND THAT IT WAS GRANTED
13 WITH REGARD TO THE ITEMS FOUND IN THE DEFENDANT'S RESIDENCE,

28 MR. ADAIR: TO CLARIFY THE ISSUE A LITTLE BIT MORE, I DID

15

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5 Attorney for Eric Burton

6
7 SUPERIOR COURT OF CALIFORNIA
8 COURT OF THE EAST COUNTY DIVISION
9 COUNTY OF SAN DIEGO

10 PEOPLE OF THE STATE OF CALIFORNIA,)

11 Plaintiff,

12 vs.

13 ERIC BURTON,

14 Defendant.

No. SCE 238643

DECLARATION OF ERIC BURTON

Motion Date: November 5, 2004

15 I Eric Burton declare:

- 16 1. I am the defendant in this case.
17 2. On March 19, 2004 I was arrested.
18 3. My home was searched by the El Cajon Police and some items were taken from my home.
19 4. I did not consent to the search of my home.
20 5. I did not authorize the search of my home.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
22 correct.

23
24 Dated: 10-20-04


ERIC BURTON

~~THE COURT: AND THE BASIS FOR THE WRIT IS AS TO WHAT LEGAL~~
~~ISSUE?~~

MR. ADAIR: THE BASIS FOR THE WRIT IS THE DENIAL OF PART
OF A MOTION TO SUPPRESS THAT WAS BROUGHT PRETRIAL IN JUDGE
PRECKEL'S DEPARTMENT. THAT PART OF THE MOTION THAT HE DENIED
REQUESTED THAT THE RESULTS OF THE SEARCH OF AN AUTOMOBILE
BELONGING TO MY CLIENT AND THE SEARCH OF A BACKPACK THAT WAS ON
THE TOP OF THE AUTOMOBILE -- HE BASICALLY STATED THAT THERE WAS
THE AUTOMOBILE EXCEPTION TO THE REQUIREMENT TO HAVE A WARRANT,
AND THEREFORE, DENIED OUR REQUEST TO SUPPRESS THAT EVIDENCE.

THE COURT: OKAY.

MS. HANNAH, ANY RESPONSE TO THAT REQUEST?

MS. HANNAH: ~~PEOPLE ARE PROPOSED~~, YOUR HONOR. I THINK THAT
A PROPER WAY TO FILE A WRIT, OF COURSE, IS TO FILE IT WITH THE
COURT OF APPEALS, AND THEN THEY WOULD BE THE AUTHORITY THAT
WOULD GRANT THE STAY. ~~ON FEBRUARY 28TH THE COURT CAME BACK WITH~~
MOTION WAS HEARD, I BELIEVE -- AT LEAST THE COURT CAME BACK WITH
ITS RULING -- ON FEBRUARY 28TH.

~~THE COURT: THE MOTION WAS HEARD AND THE COURT CAME BACK WITH ITS RULING ON FEBRUARY 28TH.~~
~~THE COURT: THE MOTION WAS HEARD AND THE COURT CAME BACK WITH ITS RULING ON FEBRUARY 28TH.~~
~~THE COURT: THE MOTION WAS HEARD AND THE COURT CAME BACK WITH ITS RULING ON FEBRUARY 28TH.~~
~~THE COURT: THE MOTION WAS HEARD AND THE COURT CAME BACK WITH ITS RULING ON FEBRUARY 28TH.~~

THE COURT: ALL RIGHT.

MR. ADAIR: YOUR HONOR, CAN I RESPOND?

THE COURT: YES. BUT LET ME CONFIRM THE DATE. IT LOOKS

~~I THINK THE HEARING WAS ON FEBRUARY~~

1 MS. HANNAH: IT STARTED ON JANUARY 28TH. THE RULING
2 WAS --

3 THE COURT: THEN IT CARRIED OVER TO THE FOLLOWING MONDAY,
4 IT LOOKS LIKE.

5 MR. ADAIR: IT WAS ACTUALLY CONTINUED INTO LATE FEBRUARY.

6 THE COURT: OH, OKAY. THERE WAS ANOTHER CONTINUANCE.

7 MS. HANNAH: THERE WAS.

8 THE COURT: ALL RIGHT. WELL, LET'S JUST PINPOINT THAT
9 DATE, FOR THE RECORD.

10 MS. HANNAH: EXCUSE ME. I MISSPOKE. IT WAS FEBRUARY
11 24TH.

12 THE COURT: ALL RIGHT. I SEE THOSE MINUTES. SO THE
13 MOTION WAS DENIED ON FEBRUARY 24TH.

14 MR. ADAIR, YOU HAD A BRIEF REPLY?

15 MR. ADAIR: MY CLIENT'S ALWAYS REQUESTED THAT I GO TO THE
16 FOURTH DISTRICT ON THIS. IT WAS MY DECISION NOT TO DO IT. AND
17 I THINK HE WOULD WANT IT ON THE RECORD THAT HE FROM PRETTY MUCH
18 DAY ONE HAS REQUESTED A REVIEW. ~~AND HE WANTED TO HAVE A~~

19 ~~AND DISADVANTAGE OF THAT. BUT TO STILL FEELS HE~~
20 SHOULD VINDICATE HIS RIGHTS IN THAT REGARD.

21 THE COURT: ALL RIGHT. WELL, I UNDERSTAND THAT. THE
22 REQUEST ^{FOR THE STAY} ~~IS~~ ^{IS} DENIED. ^{error} THE MOTION WAS RULED UPON
23 FEBRUARY 24TH. ~~THE MOTION WAS RULED UPON FEBRUARY 24TH.~~

26 ALSO, MR. BURTON WILL NOT BE DEPRIVED OF HIS
27 APPELLATE RIGHTS. SHOULD THE CASE PROCEED ADVERSELY TO HIM AND
28 HE WISHES TO APPEAL ON THOSE ISSUES HE WILL CERTAINLY BE ABLE

counsel adair ineffective in failure to protect appeal
lost the appellate court
on defendant's motion
18

1 THE COURT: OKAY. ALL RIGHT. THEN I THINK THAT COVERS
2 THE PEOPLE'S MOTIONS FOR THE MOMENT.

3 AND LET'S TURN TO THE DEFENSE MOTIONS. AND LOOKING
4 FIRST AT THE MOTION TO SUPPRESS DEFENDANT'S ADMISSIONS OR
5 ~~THE AUDIO INTERVIEW. AND AS I UNDERSTAND IT, AT THIS POINT, THE~~

6 PEOPLE ARE NOT PLANNING TO PRESENT THOSE STATEMENTS IN THEIR
7 CASE-IN-CHIEF; IS THAT CORRECT?

8 MS. HANNAH: IT IS.

9 THE COURT: ALL RIGHT.

1 ~~WOULD ANTICIPATE USING THOSE STATEMENTS IS IF THE DEFENDANT WERE~~
2 ~~TO TESTIFY, AND THEN TO USE IT AS IMPEACHMENT?~~

3 ~~MS. HANNAN: YES.~~

4 THE COURT: ALL RIGHT. IN LIGHT OF THAT, I DON'T THINK I
5 NEED TO RULE ON THE MOTION.

6 DO YOU AGREE?

7 *Conflict*
Adair MR. ADAIR: I BELIEVE THAT'S CORRECT, YOUR HONOR.

8 THE COURT: ALL RIGHT. DO YOU ANTICIPATE ANY MOTION OR --
9 I DON'T SEE ANYTHING IN HERE THAT WOULD GO TO BARRING PEOPLE'S
10 ~~FOR THE PURPOSES OF~~, SUCH AS VOLUNTARINESS, WHICH I

13 MR. ADAIR: I BELIEVE MY CLIENT, WHO WOULD BRING A FURTHER
14 ISSUE CONCERNING VOLUNTARINESS -- HIS POSITION IS THAT HE WAS,
15 IN ESSENCE, TORTURED. THAT HE WAS PUT IN A PAPER SUIT, THAT HE
16 WAS BAREFOOT, THAT HE WAS REFUSED THE RIGHT TO CALL AN
17 ATTORNEY. AND THAT THERE WERE OTHER INFLICTIONS OF DISCOMFORT
18 AND DISTRESS -- ~~AND THAT THERE WERE OTHER INFLICTIONS OF DISCOMFORT~~

19 THE COURT: ALL RIGHT.

27

28 ~~USING THE PREVIOUS CHARGEMENT. IF THE DEFENDANT~~

(20)

1 I'M NOT BEING TOLD THAT THE PHOTOGRAPH DEPICTS SOMETHING
2 THAT WAS DIFFERENT THAN THE UNDERSTANDING JUDGE PRECKEL
3 HAD WHEN HE MADE THE RULING AND THE FINDING.

4 ALSO, IF THE PHOTOGRAPHS WERE AVAILABLE IN
5 MARCH -- WE'RE NOW IN JULY, ~~SO THERE WOULD HAVE BEEN~~
6 TIME TO PRESENT A MOTION BEFORE THE TRIAL. ~~SO I DON'T~~

7 * BELIEVE THAT I DO HAVE JURISDICTION TO ENTERTAIN THE
8 MOTION. AND EVEN IF I DID, THE THEORIES PREVIOUSLY
9 EXPLAINED BY THE PEOPLE OF THE VEHICLE EXCEPTION AND
~~_____~~
~~_____~~
~~_____~~

12 APPEAR TO APPLY. SO FOR ALL THOSE REASONS THE MOTION IS
13 DENIED.

14 ANYTHING FURTHER, MR. ADAIR?

15 MR. ADAIR: IF I COULD HAVE A MOMENT.

16 (COUNSEL AND THE DEFENDANT CONFER.)

17 MR. ADAIR: I'LL HAVE TO CHECK AND SEE IF IT'S
18 BEEN PREVIOUSLY PROVIDED, BUT WE NEED A COPY OF THE
19 ~~_____~~ 911 CALL TO THE DISPATCHER.

20 MR. TROCHA: AS TO THAT, I DO KNOW WHAT
21 HAPPENED TO THE TAPES. MS. HANNAH INFORMED ME THAT WHEN
22 THIS CASE ORIGINALLY CAME AROUND, ~~_____~~
23 ~~_____~~ THE
24 TAPES WERE EVENTUALLY TAPED OVER. SO THERE ARE NO
25 TAPES.
~~_____~~
~~_____~~
~~_____~~



23

1 [REDACTED] THE COURT: AND BY THE TIME THE RECORD WAS MADE,
2 [REDACTED] IT WAS DESTROYED.

3 MR. TROCHA: THEY WERE INADVERTENTLY DESTROYED
4 BY THE POLICE DEPARTMENT. [REDACTED]

6 [REDACTED] BUT AS TO THE EXACT WORDING OF THE
7 CALL, WE DON'T HAVE THAT.

10 THE COURT: ALL RIGHT. [REDACTED]

13 THERE'S NOTHING TO PRODUCE IF IT'S BEEN DESTROYED.

14 MR. ADAIR: WE'D ASK THE CASE BE DISMISSED FOR
15 THE DESTRUCTION OF EVIDENCE THAT MIGHT TEND TO SHOW
16 MR. BURTON'S INNOCENCE.

17 THE COURT: WELL, THAT MOTION WILL BE DENIED.
18 AND I THINK THAT THAT MOTION HAS BEEN RAISED BEFORE IF
19 MY MEMORY'S CORRECT. LET ME LOOK BACK. WELL, I DON'T

21 WE DID HAVE SOME DISCUSSION ON IT BEFORE, BUT IT DOES
22 NOT APPEAR THERE WAS ANY INTENTIONAL DESTRUCTION. IT
23 WAS INADVERTENTLY DESTROYED. AND THE MOTION IS DENIED.
24 ANYTHING FURTHER?

25 MR. ADAIR: WE'D ASK FOR PRODUCTION OF VIDEO
26 FROM THE POLICE GARAGES.

27 THE COURT: IS THERE ANY EVIDENCE OR KNOWLEDGE
28 THAT THERE IS SUCH VIDEOTAPE?



0026

1 by the law.

9 In this case, the following items have been set out for discovery:

15 The People have also requested the 911 tapes, all of the photographs, [REDACTED]

17 [REDACTED] As the evidence continues to arrive at our office, copies will be
18 made and set out for the defense.

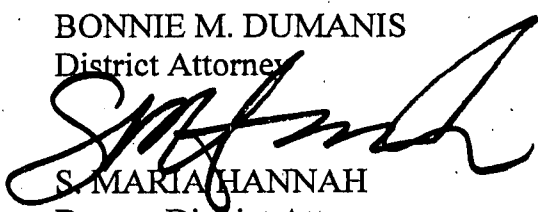
19 CONCLUSION

20 The People have and will continue to comply with providing to defense counsel the
21 discovery in this case. [REDACTED]

23 Dated: August 13, 2004

24 Respectfully submitted,

25 BONNIE M. DUMANIS
26 District Attorney

27 By: 
28 S. MARIA HANNAH
29 Deputy District Attorney
Attorneys for Plaintiff

1 **MR. TROCHA:** NOT THAT I KNOW OF, NOR DO I KNOW
2 WHAT THE VIDEO WOULD BE OF.

3 **THE COURT:** WELL, AT THE TIME OF TRIAL, IT'S A
4 LITTLE LATE FOR DISCOVERY REQUEST. SO THAT SHOULD HAVE
5 BEEN MADE BEFORE. YOU CAN CERTAINLY INQUIRE OF THE
6 OFFICERS WHEN THEY'RE HERE IF THERE IS ANY VIDEOTAPE.

8 **MR. TROCHA,** DID YOU HAVE ANYTHING ELSE?

9 **MR. TROCHA:** THERE WAS ONE THING, YOUR HONOR,
10 AND THE 911 TAPES REMINDED ME. WE DO HAVE UNDER
11 SUBPOENA THE DISPATCHER THAT MR. THOMAS WAS SPEAKING TO

14 BE SOME HEARSAY ISSUES.

15 MY REQUEST IS TO HAVE HER TESTIFY INITIALLY
16 THAT SHE WAS TALKING TO MR. BURTON --

27 CONTEMPORANEOUS STATEMENT TO EXPLAIN THE ACTION.

28 **THE COURT:** IS THIS SOMEBODY YOU'RE PLANNING



1 TO CALL IN YOUR CASE IN CHIEF?

2 MR. TROCHA: IT IS. [REDACTED]

4 [REDACTED], WITHOUT GETTING
5 INTO ANY DETAILS OF THE CALL; [REDACTED]

9 [REDACTED], BUT THEN THE CALL JUST ENDED..
10 30 SECONDS LATER SHE GOT A 911 CALL.

11 THE COURT: ALL RIGHT. MR. ADAIR, YOUR
12 RESPONSE TO THAT?

13 MR. ADAIR: [REDACTED]
14 OBJECTION, BUT I BELIEVE SHE'S A WITNESS THAT WAS
15 RELATIVELY LATE DISCOVERED OR WHATEVER. I DON'T BELIEVE
16 THERE ARE ANY REPORTS CONCERNING HER STATEMENTS THAT
17 I'VE RECEIVED. [REDACTED]

19 THE COURT: WELL, WHY DON'T YOU CONSULT WITH
20 MR. TROCHA ON THAT.

21 DID YOU KNOW THE NAME OF THE WITNESS?

22 MR. TROCHA: I DO. IT'S KENDALL HILDENBRAND.
[REDACTED]

26 THE COURT: ALL RIGHT. [REDACTED] LET MR. [REDACTED]

27 REVIEW THAT OR DO [REDACTED] WITH THE DETAILS

28 [REDACTED] AND [REDACTED] AND IT CAN BE REVIEWED



26

520
180
880

*recently became
new person
receipt of transcript
8-7-07*

0359

7-19-05

SCE238643 BURTON, ERIC

Destruction of Evidence
* Attorney Adair makes a request for the 911 tapes. The people indicate that there was never a request made and the tapes were recorded over. Attorney Adair makes a motion to dismiss based on destruction of evidence that show the defendant's innocence. The motion is **DENIED**.

→ Attorney Adair makes a discovery motion for production of video from the police car. The motion is **DENIED**.

Suppression of material evidence to go
* The people make a motion to allow a witness to testify to the fact that the motor called for the nature of the call and how the call ended. The Court will **RESERVE** on that issue. *withheld discovery of material evidence*

10:42am The Court takes a brief recess while the defendant is dressed out.

11:18 am Court is again in session with all parties present as previously noted. The defendant is now dressed in civilian clothing.

11:20 am a panel of 42 prospective jurors is present. The prospective jurors are advised that pursuant to CCP209, if they fail to return to this courtroom when so ordered, they will be subject to sanctions in maximum amounts allowable by law. **JURY TRIAL COMMENCES** when the prospective jurors are sworn as to their qualifications to serve. Prospective jurors are seated according to the random list. The Court makes welcoming remarks, introduces the case, counsel, the defendant, and the names of the witnesses. The Court reads the Complaint/Information filed herein. Voir dire begins. Jurors are challenged and excused according to the confidential seating chart.

11:49 am reported sidebar held for 1 minute.

11:50 am Voir dire resumes.

11:57 am The prospective jurors are admonished and excused for the luncheon recess. Out of the presence of the jurors, Court and counsel discuss issues relating to prospective jurors.

12:00 pm Court is in recess.

1:34 pm Court is again in session with all counsel as previously noted, the defendant and all prospective jurors are present. Voir dire resumes.

1:35 pm Juror #5335584 requests to speak to the Court and counsel in private (reported 2 minutes).

1:37 pm Court is again in session and voir dire resumes.

2:54 pm Unreported sidebar held for 1 minute.

2:55 pm The prospective jurors are admonished and excused for the afternoon recess. Out of the presence of the prospective jurors, prospective juror #5213150 addresses the court.

1 ~~A PARTICULAR WITNESS THAT TENDS TO STAY IN~~
2 ~~THE COURT IS WILLING TO MAKE ANY STATEMENT ON A PARTICULAR~~
3 ~~WITNESS.~~

4 ~~THE COURT: THEN MR. TROCHA CAN JUST RAISE IT~~
5 ~~WITH YOU INDIVIDUALLY.~~

6 ~~MR. ADAM: YES~~

7 THE COURT: ALL RIGHT. BUT OTHERWISE IT WILL

8 ~~BE OFFERED IN THE COURTROOM AND ONE FROM THE~~
9 ~~STAND BY THE COURTROOM AND ONE FROM THE~~
10 ~~STAND BY THE COURTROOM AND ONE FROM THE~~
11 ~~STAND BY THE COURTROOM AND ONE FROM THE~~

12 WITH REGARD TO THE OFFICER OR THE DISPATCHER
13 WHO'S GOING TO BE TESTIFYING NEXT. I BELIEVE -- I HAD
14 HEARD MR. TROCHA'S REQUEST. YOU WERE GOING TO RESPOND.

15 ~~IT'S MORE CONTEMPORANEOUS STATEMENTS THAT --~~
16 SO MUCH THAT IT'S NOT BEING OFFERED FOR ITS TRUTH, BUT
17 IT'S MORE CONTEMPORANEOUS STATEMENTS THAT --

18 MR. ADAIR: WELL, I WOULD SUBMIT IT'S NOT

19 ~~IT'S MORE CONTEMPORANEOUS STATEMENTS THAT --~~

20 THE COURT: HIS ACTUAL WORDS AS TO WHAT HAS
21 HAPPENED LIKE, ~~IT'S MORE CONTEMPORANEOUS STATEMENTS THAT --~~
22 ~~IT'S MORE CONTEMPORANEOUS STATEMENTS THAT --~~ THAT'S PROBABLY HEARSAY.

23 ~~IT'S MORE CONTEMPORANEOUS STATEMENTS THAT --~~
24 ~~IT'S MORE CONTEMPORANEOUS STATEMENTS THAT --~~
25 ~~IT'S MORE CONTEMPORANEOUS STATEMENTS THAT --~~
26 ~~IT'S MORE CONTEMPORANEOUS STATEMENTS THAT --~~
27 ~~IT'S MORE CONTEMPORANEOUS STATEMENTS THAT --~~
28 ~~IT'S MORE CONTEMPORANEOUS STATEMENTS THAT --~~
29 ~~IT'S MORE CONTEMPORANEOUS STATEMENTS THAT --~~
30 ~~IT'S MORE CONTEMPORANEOUS STATEMENTS THAT --~~

1 **THE CLERK:** YOU DO SOLEMNLY STATE THE EVIDENCE
2 YOU SHALL GIVE IN THIS MATTER SHALL BE THE TRUTH, THE
3 WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

4 **KENDALL HILDENBRAND,**
5 CALLED BY THE PEOPLE, HAVING BEEN FIRST DULY SWORN, WAS
6 EXAMINED AND TESTIFIED AS FOLLOWS:

7 **THE WITNESS:** YES, I DO.

8 **THE CLERK:** THANK YOU. PLEASE BE SEATED IN
9 THE WITNESS STAND.

10 WILL YOU PLEASE STATE YOUR FULL NAME, SPELLING
11 BOTH YOUR FIRST AND LAST FOR THE RECORD.

12 **THE WITNESS:** KENDALL, K-E-N-D-A-L-L. LAST
13 NAME HILDENBRAND, H-I-L-D-E-N-B-R-A-N-D.

14 **THE COURT:** MS. HILDENBRAND, YOUR VOICE IS A
15 LITTLE SOFT. IF YOU COULD LEAN CLOSE TO THE MICROPHONE
16 AND TRY TO SPEAK A LITTLE MORE LOUDLY SO EVERYONE CAN
17 HEAR YOU.

18 **THE WITNESS:** OKAY.

19 **THE COURT:** THANK YOU.

20 **DIRECT EXAMINATION**

21 **BY MR. TROCHA:**

22 Q. GOOD AFTERNOON, MS. HILDENBRAND.

23 A. HELLO.

24 Q. DO YOU WORK AT THE EL CAJON POLICE DEPARTMENT?

25 A. I DO.

26 Q. IN WHAT CAPACITY?

27 A. I'M A COMMUNICATIONS OPERATOR FOR THE POLICE
28 DEPARTMENT.

1 Q. DO YOU HOLD A SPECIFIC TITLE OR RANK OR
2 ANYTHING OF THAT NATURE?

3 A. THAT IS A COMMUNICATIONS OPERATOR.

4 Q. HOW LONG HAVE YOU BEEN DOING THIS JOB?

5 A. IT WILL BE TWO YEARS IN AUGUST.

6 Q. SPECIFICALLY WHAT ARE YOUR DUTIES?

7 A. I ANSWER ALL CALLS FOR SERVICE, NON-EMERGENCY
8 AND 911 CALLS.

9 Q. ARE YOU ABLE TO DIFFERENTIATE BETWEEN THE
10 CALLS?

11 A. YES.

12 Q. HOW SO?

13 A. THERE IS A DIFFERENT RING TONE FOR A 911, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 Q. WERE YOU ON DUTY BACK OF MARCH 19TH OF LAST
23 YEAR?

24 A. YES.

25 Q. AS A COM OPERATOR?

26 A. YES. AS A COM OPERATOR.

[REDACTED]

[REDACTED]



30

1 NEED THE CLOTHING IN EVIDENCE.

2 MR. ADAIR: I WAS MORE CONCERNED ABOUT THE
3 CONTENTS OF THE BACKPACK.

4 MR. TROCHA: I WASN'T PLANNING ON INTRODUCING
5 ANY OF THE CONTENTS OF THE BACKPACK. WE WERE GOING TO
6 MENTION THERE WAS A BACKPACK. WE CAN GO INTO THE
7 CONTENTS AT A LATER TIME, BECAUSE I KNOW MR. ADAIR --

8 THE COURT: SO THE ONLY ITEM IS THE CLOTHING
9 RIGHT NOW YOU'RE GOING TO TALK ABOUT, IT IS THE BELT?

10 MR. TROCHA: PRECISELY.

11 THE COURT: OKAY.

12 MR. TROCHA: [REDACTED]

17 THE COURT: I THINK OVERALL AND BASED UPON THE
18 FACT THE DEFENSE WAS ABLE TO ILLICIT EVIDENCE OF THE
19 VICTIM'S PAST ACTS OF VIOLENCE, PEOPLE ARE ENTITLED TO
20 PUT EVERYTHING IN CONTEXT, [REDACTED]

[REDACTED] I THINK
23 IT'S APPROPRIATE.

24 MR. ADAIR: I GUESS THERE'S AN ISSUE AS TO
25 WHETHER I WOULD BE ABLE TO ILLICIT RELEVANT EVIDENCE AS
26 TO THE ALLEGED VICTIM'S TENDENCIES TO VIOLENCE.

27 THE COURT: I THINK YOU'VE ELICITED AMPLE --

28 MR. TROCHA: HE'S ADMITTED --

1 I'LL, IN TURN, EXTEND YOU THE SAME COURTESY AND WE'LL MAKE
2 THE LIFE OF OUR COURT REPORTER THAT MUCH EASIER AS WELL.

3 SO I UNDERSTAND THAT YOU DON'T BELIEVE THAT
4 YOU'RE BEING EFFECTIVELY REPRESENTED BY MR. PLUMMER. I NEED
5 TO KNOW FACTS AND SPECIFICS THAT LEAD YOU TO THAT
6 CONCLUSION.

7 THE DEFENDANT: NO. 1, I WOULD LIKE THOSE
8 MOTIONS PULLED BECAUSE THEY ARE INSUFFICIENT.

9 THE COURT: YOU WOULD LIKE THE MOTIONS WHAT?

10 THE DEFENDANT: PULLED. THE 1538 MOTIONS THAT
11 WERE FILED, [REDACTED]
12 INCORRECTLY. THEY WILL BE DEEMED INSUFFICIENT DUE TO THE
13 FACT THAT ITEMS WERE NOT SPECIFICALLY LISTED PERTAINING TO
14 ITEMS THAT WERE SEIZED. I HAVE NOT AS YET AT THIS POINT,
15 AFTER REQUESTING SEVERAL TIMES, TO HAVE RECEIPT OF THE
16 PROPERTY THAT WAS SEIZED FROM ME. MY LIFE, [REDACTED]
17 MY PROPERTY HAVE BEEN SEIZED FROM ME UNLAWFULLY. IT WAS NOT
18 MENTIONED IN THE FIRST MOTION THAT WAS SUBMITTED THAT PRIOR
19 TO INTERROGATION THERE WAS ALSO AN ADDITIONAL 4TH AMENDMENT
20 VIOLATION WHEREAS EVIDENCE WAS TAKEN FROM MY BODY. BELT,
21 PANTS, SHIRT, SOCKS, SHOES, AND GLASSES WERE REMOVED FROM MY
22 BODY, [REDACTED]
23 TAKEN AND PLACED WITH OTHER PROPERTY THAT WAS SEIZED, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

3 [REDACTED] THAT VIOLATION OF THE 4TH
4 AMENDMENT SHOULD HAVE BEEN MENTIONED IN THE MOTION BECAUSE
5 IT WAS DONE WITHOUT WARRANT, AND ALSO THERE WAS A VIOLATION
6 OF PENAL CODE 147 AS I BELIEVE PRIOR TO INTERROGATION. I
7 WAS STRIPPED NAKED, PUT INTO A WHITE PAPER SUIT, BAREFOOT
8 AND FREEZING AND PLACED IN THE ISOLATION CELL FOR
9 APPROXIMATELY ONE HOUR PRIOR TO INTERROGATION.

10 THE COURT: YOU WERE UNDER ARREST DURING ALL OF
11 THAT?

12 THE DEFENDANT: I WAS PLACED IMMEDIATELY UNDER
13 ARREST, YOUR HONOR, FROM THE POINT OF CONTACT WITH THE
14 POLICE.

15 THE COURT: GO AHEAD.

16 THE DEFENDANT: THERE WAS STATEMENTS ENTERED
17 ALSO IN THAT FIRST MOTION THAT WERE FALSE STATEMENTS THAT I
18 SPECIFICALLY TOLD MY ATTORNEY, MR. PLUMMER, THAT I DID NOT
19 MAKE. AFTER THE POLICE MADE DIRECT INCRIMINATING
20 STATEMENTS, "WHERE IS --" OR QUESTION AND DIRECT
21 INCRIMINATING QUESTION, ^{ALLEGED} [REDACTED] I STUCK TO MY
22 RIGHT TO REMAIN SILENT. I SAID NOTHING. [REDACTED]

[REDACTED]

ALLEGED

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3 [REDACTED], BEFORE

4 INTERROGATION I INVOKED MY 6TH AMENDMENT RIGHT TO COUNSEL

5 IMMEDIATELY FOLLOWED BY MY 5TH AMENDMENT RIGHT TO REMAIN

6 SILENT. MR. PLUMMER DID NOT MENTION THAT IN THE MOTION. HE

7 OMITTED THAT, [REDACTED]

8 [REDACTED] AFTER I

9 INVOKE MY 5TH AMENDMENT RIGHT AND THE OFFICER INITIATED THE

10 CONVERSATION. I DID NOT. I THEN AGAIN WAS QUESTIONED. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 A ROLE IN DENYING MY 1ST AMENDMENT RIGHT TO FREEDOM OF

18 SPEECH AND EXPRESSION IN VIOLATION OF PENAL CODE 851(D). I

19 WAS DETAINED PAST THREE HOURS.

20 UPON MY IMMEDIATE REQUEST TO SPEAK TO MY

21 ATTORNEY, I SHOULD HAVE BEEN ALLOWED TO CALL MY ATTORNEY,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 LIKE A SLAVE, SHACKLED AND BAREFOOT. PHOTOGRAPHS WERE TAKEN

[REDACTED]

SINCE I

23 AM BASICALLY A LAYMAN IN THIS FIELD, [REDACTED]

[REDACTED]

3

35

(P)

FILED 0067
Clerk of the Superior Court

OCT 20 2004

By: M. Rapallo, Deputy

1 Lee Plummer
2 Attorney at Law
3 State Bar # 77783
4 4045 Bonita Rd. #202
5 Bonita, Ca. 91902
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SUPERIOR COURT OF CALIFORNIA
COURT OF THE EAST COUNTY DIVISION

COUNTY OF SAN DIEGO

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,

vs.

ERIC WILTON BURTON

Defendant.

Dept.

No. SCE238643

NOTICE OF MOTION AND MOTION
TO SUPPRESS EVIDENCE(PENAL CODE
1538.5

DATE: November 5, 2004

TIME: 9:30 A.M.

ESTIMATED TIME : ½ HOUR

TO THE ABOVE-ENTITLED COURT AND TO MARIA HANNAH, DEPUTY DISTRICT
ATTORNEY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

PLEASE TAKE NOTICE that on November 5, 2004, in Department 11 at 9:30 A.M. , or
as soon thereafter as the matter may be heard, the defendant, ERIC WILTON BURTON, will move
that the Court suppress all evidence under Penal Code 1538.5 seized by the El Cajon Police
Department from the defendant's home at the time of the defendants arrest. The search was in
defendant's home without a warrant.

(36)

0068

1 The evidence that defendant seeks to suppress includes, but is not limited to, the following
2 indicated items:

3
4 All physical (and intangible) evidence seized or obtained as a result of this search will be
5 challenged based on search and seizure violations that occurred during:

6
7
8 ☒ Defendant's detention;

9
10 ☒ Defendant's arrest.

11
12 The physical (and intangible) evidence seized or obtained from this search occurred at the
13 following place(s), including:

14
15 ☒ The residence, building, structure, or premises entered or invaded by the police in this
16 cause;

17
18 ☒ The box(es), package(s), or other containers opened or invaded by the police in this
19 cause;

20
21 This motion challenges all physical (and intangible) evidence seized or obtained as a result of
22 the deprivation of the liberty or right to privacy of the following person: Eric Burton

23
24 The complained of search and seizure violates defendant's Fourth Amendment rights under the
25 United States Constitution.

26
27 More specifically, this motion is based on violation of defendant's reasonable expectation of
28

0069

1 privacy, as guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States
2 Constitution, and on the following particular grounds:

3
4 x The police action was without a warrant, and lacked sufficient cause to justify the
5 invasion of liberty complained of;

6
7 x The arrest ^{outside} ~~was in~~ defendant's place of residence without a warrant;

8
9
10 This motion will be based on the following evidence:

11
12 x Evidence to be presented at the hearing on this motion;

13
14 x Supporting declarations (attached to this motion);

15
16 x Transcript of preliminary hearing;

17
18 x Memorandum of points and authorities (attached to this motion);

19
20
21
22 Date: 10-19-04

Respectfully submitted,

23
24 

25 Lee Plummer

26 Attorney at Law



0102

1 CHARLES H. ADAIR
2 ATTORNEY AT LAW
3 533 F STREET, STE. 212
4 SAN DIEGO, CA 92101
5 619/233-3161
6 STATE BAR NUMBER: 52163

MAR 16 2005

7
8 ATTORNEY FOR DEFENDANT

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
EAST COUNTY DIVISION

13 PEOPLE OF THE STATE OF CALIFORNIA,

14 Plaintiff,

15 vs.

16 ERIC W. BURTON,

17 Defendant

) CASE NO: SCE238643

) D.A. NO: MAJ339

) NOTICE OF MOTION

) TO SUPPRESS DEFENDANT'S ALLEGED *DrB*
ADMISSIONS OR CONFESSIONS

) DATE: 3/16/05

) TIME: 9:00 AM

) PLACE: S-11

22 TO: THE DISTRICT ATTORNEY OF SAN DIEGO COUNTY

23
24 PLEASE TAKE NOTICE that at the time and place noted above, the defendant will move for an
25 order suppressing all evidence of the defendant's alleged admissions or confession to the charges in
26 the above-entitled action.

27 This motion will be made on the ground that the introduction of such evidence before the trier of
28 fact would violate the defendant's right to counsel under both the Fifth and the Sixth Amendment,

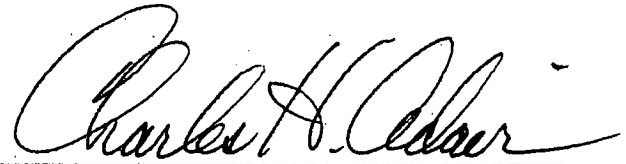
39

0103

1 and his right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the
2 United States Constitution.

3 This motion will be based on this notice of motion, and memorandum of points and authorities
4 served and filed herewith, on such supplemental memoranda of points and authorities as may
5 hereafter be filed with the court or stated orally at the conclusion of the hearing on the motion, on all
6 the papers and records on file in this action, and on such oral and documentary evidence as may be
7 presented at the hearing of the motion.
8

9 Dated: 3/15/05

10
11 

12 CHARLES H. ADAIR,

13 Attorney for Defendant
14
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1 CALL OFFICER HOLMES.

2 (THE WITNESS WAS DULY SWORN)

3 THE CLERK: THANK YOU. PLEASE BE SEATED IN THE
4 WITNESS BOX.

5 SIR, PLEASE STATE YOUR FIRST NAME AND LAST NAME,
6 SPELLING OF BOTH, PLEASE.

7 THE WITNESS: DONALD HOLMES. D-O-N-A-L-D
8 H-O-L-M-E-S.

9 THE CLERK: THANK YOU.

10

11 DONALD HOLMES

12 CALLED AS A WITNESS ON BEHALF OF THE PROSECUTION; AFTER
13 HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14

15 DIRECT EXAMINATION

16 BY MS. HANNAH:

17 Q. OFFICER HOLMES, WHERE ARE YOU EMPLOYED?

18 A. POLICE OFFICER WITH THE CITY OF EL CAJON.

19 Q. HOW LONG HAVE YOU BEEN SO EMPLOYED?

20 A. THREE YEARS.

21 Q. WERE YOU WORKING ON MARCH 19TH OF THE YEAR 2004?

22 A. I WAS.

23 Q. DO YOU RECALL WHAT SHIFT YOU WERE WORKING?

24 A. DAY SHIFT, PATROL.

25 Q. DID YOU RECEIVE A DISPATCH CALL OR RESPOND TO
26 DISPATCH CALL TO REPORT TO 425 EAST MAIN STREET?

27 A. I DID.

28 Q. DID YOU, IN FACT, RESPOND TO THAT ADDRESS?

47

1 A. YES.

2 Q. DO YOU RECALL APPROXIMATELY WHAT TIME YOU
3 RESPONDED TO THAT LOCATION?

4 A. I DON'T RECALL THE TIME OFFHAND. I KNOW IT WAS
5 THE AFTERNOON.

[REDACTED]

19 Q. DO YOU SEE THAT PERSON IN THE COURTROOM TODAY?

20 A. YES, I DO.

21 Q. WILL YOU POINT THAT PERSON OUT AS TO WHERE
22 THEY'RE SEATED AND SOMETHING THEY'RE WEARING?

23 A. THE SUBJECT SITTING AT THE DEFENSE TABLE WITH
24 THE SUNGLASSES.

25 THE COURT: INDICATING AND IDENTIFYING THE
26 DEFENDANT, MR. ERIC BURTON.

27 MS. HANNAH: THANK YOU, YOUR HONOR.

28 ///

48

1 BY MS. HANNAH:

2 Q. OFFICER HOLMES, WHEN YOU ARRIVED AT THAT
3 LOCATION, WERE YOU ALONE OR WITH A PARTNER?

4 A. I WAS ALONE AT THAT TIME.

5 Q. WHEN YOU ARRIVED WERE THERE OTHER POLICE
6 OFFICERS ARRIVING AT THE SAME TIME OR WERE YOU THE FIRST TO
7 ARRIVE?

8 A. I WAS THE FIRST, ~~BUT THERE WERE SEVERAL THAT~~
9 ~~WERE COMING THAT WAY.~~

10 Q. WHEN YOU ARRIVED AT 425 EAST MAIN STREET, DID
11 YOU IMMEDIATELY SEE THE DEFENDANT?

12 A. YES.

13 Q. COULD YOU DESCRIBE TO US WHERE HE WAS AND WHAT
14 HE WAS DOING?

15 A. HE WAS -- ~~IN ORDER TO GET TO THE APARTMENT~~
16 ~~COMPLEX, YOU HAVE TO DRIVE THROUGH A DRIVEWAY IN BETWEEN TWO~~
17 ~~BUSINESSES, AND IT OPENS UP INTO A PARKING LOT.~~ HE WAS
18 STANDING DIRECTLY -- IF YOU DROVE STRAIGHT DOWN THE
19 DRIVEWAY, DIRECTLY OUT IN FRONT OF ONE OF THE APARTMENTS

21 Q. WAS HE INSIDE A VEHICLE OR OUTSIDE A VEHICLE?

22 A. NO, HE WAS OUTSIDE, ~~_____~~

24 Q. DID YOU NOTICE HOW CLOSE HE WAS OR WHETHER OR
25 NOT HE WAS STANDING CLOSE TO A VEHICLE?

26 A. ~~_____~~ -- THERE WERE VEHICLES IN THE
27 PARKING LOT, BUT I WASN'T REALLY, AT THAT POINT IN TIME,
28 PAYING ATTENTION TO ANY VEHICLES IN PARTICULAR.

1 Q. WHEN YOU SAW THE DEFENDANT, WHAT DID YOU DO?

2 A. I CONDUCTED WHAT WE WOULD CALL A PEDESTRIAN HOT
3 STOP.

4 Q. CAN YOU PLEASE DESCRIBE FOR THE COURT WHAT THAT
5 IS?

6 A. BASICALLY, JUST GIVING HIM DIRECTION AT
7 GUNPOINT. [REDACTED]

9 Q. WHEN YOU DID THIS, HAD OTHER OFFICERS ARRIVED AT
10 THE SCENE?

11 A. YES. [REDACTED]

15 Q. WHEN YOU GAVE THESE INSTRUCTIONS, DID THE
16 DEFENDANT RESPOND?

17 A. YES. [REDACTED]

19 ~~RESPONDED?~~

20 MR. ADAIR: YOUR HONOR, COULD I INTERRUPT
21 BRIEFLY? I'VE GOT A LOT GOING ON. I'D ASK IF THE WITNESS
22 IS BEING EXCUSED FROM THE COURTROOM.

23 THE COURT: ALL RIGHT. THE MOTION TO EXCLUDE IS
24 GRANTED.

25 OTHER THAN POSSIBLY YOUR CLIENT, DO YOU HAVE ANY
26 OTHER WITNESSES YOURSELF?

27 MR. ADAIR: NO, YOUR HONOR.

28 THE COURT: ALL RIGHT. THE OFFICERS IN THE BACK

1 OF THE COURTROOM WILL PLEASE STEP OUTSIDE, NOT DISCUSS THE
2 SUBJECT MATTER WITH ANYONE UNTIL THE CONCLUSION OF THIS
3 HEARING. THANK YOU.

4 MS. HANNAH: THANK YOU, YOUR HONOR.

5 BY MS. HANNAH:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 Q. WHAT INSTRUCTIONS DID YOU GIVE HIM?

[REDACTED]

15 FROM ME. HAD HIM KNEELING DOWN, PUT HIS HANDS BEHIND HIS
16 HEAD AND SPREAD HIS KNEES ACROSS HIS ANKLES SO THAT HE WAS
17 IN A POSITION WHERE HE COULDN'T EASILY MOVE:

[REDACTED]

[REDACTED]

20 Q. AT SOME POINT DID YOU PLACE THE DEFENDANT INTO
21 HANDCUFFS?

22 A. I DID NOT, BUT HE WAS PLACED INTO HANDCUFFS.

23 Q. DID YOU OBSERVE THAT HAPPENING?

24 A. YES.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(45)

8 Q. HOW LONG AFTER YOU ARRIVED DID YOU ESTIMATE THAT
9 YOU PLACED THE DEFENDANT INTO CUSTODY?

10 A. AS FAR AS PUTTING HIM INTO HANDCUFFS?

11 Q. YES.

12 A. PROBABLY WITHIN 10, 15 SECONDS.

13 Q. DID YOU OBSERVE ANY OTHER PERSONS AROUND THE
14 DEFENDANT'S LOCATION EITHER BEFORE OR AFTER THE DEFENDANT
15 WAS PLACED INTO HANDCUFFS?

16 A. YES.

17 Q. WHO DID YOU NOTICE?

18 A. THERE WAS A SUBJECT WHO HAD LATER BEEN
[REDACTED]
[REDACTED]

21 Q. WHAT HAPPENED TO THAT SECOND INDIVIDUAL?

22 A. I TOLD HIM TO REMAIN WHERE HE WAS WHILE I WAS
23 GIVING MR. BURTON DIRECTIONS, AND HE STOOD BY WITH HIS HANDS
24 IN THE AIR WHILE WE SECURED MR. BURTON IN HANDCUFFS.

25 Q. AFTER MR. BURTON WAS PLACED INTO HANDCUFFS, DID
26 AN AGENT OR OFFICER KIRK ARRIVE?

27 A. YES.

28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 Q. CAN YOU TELL US WHAT YOU OBSERVED OR HEARD?

5 A. AS I WAS WALKING MR. BURTON TO THE PATROL CAR,
6 AGENT KIRK ASKED HIM WHERE THE ^{ALLEGED} WEAPON WAS OR THE ^{ALLEGED} GUN WAS. I
[REDACTED]
[REDACTED]

9 Q. DID YOU HEAR AGENT KIRK ASK THE DEFENDANT IF HE
10 COULD SEARCH THE RESIDENCE?

11 A. I DID NOT.
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

19 Q. WERE YOU THE OFFICER THAT TRASPORTED THE
20 DEFENDANT TO EL CAJON POLICE STATION?

21 A. YES.

22 Q. WHEN DID THAT OCCUR?

23 A. WITHIN A FEW MINUTES OF PLACING HIM UNDER
24 ARREST, I THINK I GOT SOME INFORMATION FROM THE OTHER
25 SUBJECT WHO WAS THERE WITH HIM; [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

28 Q. WHEN YOU TRANSPORTED THE DEFENDANT TO THE POLICE

1 STATION, DID YOU PROCESS THE DEFENDANT?

2 A. YES.

3 Q. AT SOME POINT DID YOU INDICATE TO THE DEFENDANT
4 THAT ANOTHER OFFICER WOULD THEN COME IN AND SPEAK WITH HIM?

5 A. I DID.

~~_____~~
~~_____~~

8 OFFICER HOLMES, AT THE POLICE STATION YOU
9 INDICATED THAT YOU TOLD THE DEFENDANT ANOTHER OFFICER WOULD
10 SPEAK TO HIM; IS THAT CORRECT?

11 A. YES.

12 ~~Q. AND DO YOU RECALL ANY OTHER OR NOT THE DEFENDANT~~

13 ~~SPEAK ANYTHING TO YOU AFTER YOU TOLD HIM ANOTHER OFFICER~~

14 ~~WOULD BE INTERVIEWING OR SPEAKING WITH HIM?~~

15 ~~A. I DON'T RECALL SPECIFICALLY. I COULD IMAGINE~~

16 ~~MEMORIES REPORTING AT MY REPORT TO GIVE YOU THE ANSWER.~~

17 ~~Q. IF THAT WILL REFRESH YOUR MEMORY, PLEASE DO.~~

18 ~~A. OKAY.~~

19 Q. UPON INFORMING THE DEFENDANT THAT ANOTHER
20 OFFICER WOULD BE IN TO SPEAK WITH HIM, DID THE DEFENDANT
21 HAVE A RESPONSE?

22 A. YES, HE DID.

23 Q. DO YOU REMEMBER WHAT HIS REPLY WAS?

24 A. HE TOLD ME THAT HE WOULD LIKE TO SPEAK TO AN
25 ATTORNEY AND EXERCISE HIS 5TH AMENDMENT RIGHT; ~~_____~~

~~_____~~

27 Q. DID HE USE THAT LANGUAGE SPECIFICALLY
28 "CONCERNING MY 5TH AMENDMENT RIGHTS"?

1 A. YES, HE DID.

2 MS. HANNAH: THANK YOU. NOTHING FURTHER.

3 THE COURT: MR. ADAIR.

4 MR. ADAIR: THANK YOU, YOUR HONOR.

5

6

CROSS-EXAMINATION

7

BY MR. ADAIR:

8

Q. OFFICER HOLMES, GOOD MORNING.

9

A. GOOD MORNING.

10

Q. OFFICER, YOU ARRIVED AT THE LOCATION WHERE MR.

11

BURTON WAS; CORRECT?

12

A. CORRECT.

13

Q. I TAKE IT YOU WERE THE FIRST OFFICER OUT OR ON

14

THAT SCENE; CORRECT?

15

A. YES.

16

Q. YOU HAD YOUR GUN OUT?

17

A. ~~EVERYTHING~~, YES.

18

Q. MR. BURTON WAS THERE WITH HIS HANDS UP AT SOME

19

POINT?

20

A. CORRECT.

21

Q. WAS IT THAT POINT WHERE THE OTHER OFFICERS

22

STARTED TO ARRIVE?

23

A. CORRECT, AND THE PROCESS I DIDN'T EXACTLY SEE

24

BECAUSE I WAS FOCUSED ON HIM, BUT THEY WERE ARRIVING DURING

25

THAT PROCESS, YES.

26

Q. YOU SAID THAT YOU DIDN'T HANDCUFF HIM BUT

27

SOMEBODY ELSE DID?

28

A. CORRECT.

49

1 Q. AND DID YOU STILL HAVE YOUR GUN OUT COVERING MR.
2 BURTON AT THAT TIME?

3 A. YES.

[REDACTED]

[REDACTED]

[REDACTED]

7 Q. WHOSE RESPONSIBILITY WAS MR. BURTON AT THAT
8 TIME?

9 A. I WOULD SAY MINE.

10 Q. AND DID YOU STAY WITH MR. BURTON TO MAKE SURE
11 THAT HE DIDN'T DO ANYTHING THAT WOULD BE DANGEROUS TO THE
12 OFFICERS OR ANYBODY ELSE?

13 A. I GUESS I'M NOT UNDERSTANDING YOUR QUESTION.

14 Q. ALL RIGHT. PUT IT SIMPLY, YOU WERE STILL
15 WATCHING MR. BURTON VERY CLOSELY; [REDACTED]

16 A. [REDACTED] -- I MEAN, THERE WERE TWO
17 OTHER OFFICERS ON THE SCENE, SO IT WASN'T THAT I WAS
18 DIRECTLY STANDING THERE WATCHING HIM FOR 100 PERCENT OF THE
19 TIME. THERE WERE OTHER THINGS THAT WERE GOING ON AT THAT
20 TIME. ONCE HE WAS SECURED, [REDACTED]

[REDACTED]

22 Q. DID YOU PUT MR. BURTON IN YOUR PATROL VEHICLE?

23 A. YES.

24 Q. ~~HOW SOON AFTER HE WAS HANDLED BY THE POLICE, COULD YOU~~
25 ~~GIVE ME THE TIME PERIOD BETWEEN THE TIME HE WAS HANDLED BY~~
26 ~~THE POLICE AND THE TIME HE WENT IN YOUR VEHICLE.~~

27 A. I CAN'T GIVE YOU AN EXACT TIME PERIOD. [REDACTED]

[REDACTED]

1 Q. WHEN HE WAS IN YOUR PATROL CAR, WERE YOU THERE
2 WITH HIM?

3 A. THE ENTIRE TIME HE WAS IN PATROL CAR?

4 Q. YES.

5 A. I DON'T RECALL.

~~6 [REDACTED]~~

~~7 [REDACTED]~~

~~8 [REDACTED]~~

9 Q. WERE THE WINDOWS DOWN IN YOUR PATROL CAR?

10 A. ~~[REDACTED]~~, BUT I CAN'T SPECIFICALLY
11 RECALL THAT DAY.

12 Q. AND I BELIEVE YOU TESTIFIED THAT YOU'VE WALKED
13 MR. BURTON TO THE PATROL VEHICLE; CORRECT?

14 A. CORRECT.

15 Q. WHEN DID YOU WRITE YOUR REPORT ON THIS INCIDENT?

16 A. I WOULD HAVE WRITTEN IT THAT AFTERNOON.

17 Q. BUT WITHIN WHAT, A COUPLE OF HOURS AFTER THE
18 EVENTS TOOK PLACE?

19 A. CORRECT.

20 Q. AND I BELIEVE YOU TESTIFIED TO THE FACT THAT YOU
21 NEVER HEARD OR DID YOU EVER HEAR AGENT KIRK TALKING TO MR.
22 BURTON?

23 A. YES, I DID.

24 Q. WHAT WAS SAID?

25 A. THE PORTION THAT I HEARD WAS HIM ASKING MR.
26 BURTON WHERE THE ^{ALLEGED} WEAPON WAS.

~~27 [REDACTED]~~

~~28 [REDACTED]~~

FEBRUARY 24TH, 2005, 8:30 A.M., EL CAJON, CA., DEPT. 12

THE COURT: LADIES AND GENTLEMEN, GOOD MORNING. WE'RE ON THE RECORD IN THE CASE OF THE PEOPLE VERSUS ERIC BURTON, CASE SCE 238643. MR. BURTON IS BEFORE THE COURT, TOGETHER WITH HIS ATTORNEY OF RECORD, MR. ADAIR. MISS HANNAH IS AGAIN PRESENT FOR THE PEOPLE. I SAY AGAIN, BECAUSE THIS HEARING IS A CONTINUATION, A RESUMPTION OF PRIOR HEARINGS CONCERNING THE DEFENDANT'S MOTION TO SUPPRESS EVIDENCE PURSUANT TO PENAL CODE SECTION 1538.5. THE FIRST PORTION OF A HEARING WAS CONDUCTED ON JANUARY 28TH. FURTHER HEARING WAS HAD CONCERNING THE SAME MOTION ON JANUARY 31ST. ON THAT DATE THE COURT GRANTED THE DEFENSE MOTION AND REQUEST TO SET A FURTHER HEARING DATE SO AS TO PERMIT ONE OR TWO PROSPECTIVE WITNESSES TO BE SUBPOENAED OR RE-SUBPOENAED AND BROUGHT BEFORE THE COURT TO TESTIFY. SO THAT BRINGS US TO TODAY'S DATE, PLACE AND TIME.

MR. ADAIR, ARE YOU READY TO PROCEED?

MR. ADAIR: WE ARE, YOUR HONOR. AT THIS TIME I'D LIKE TO CALL MR. HELSEL TO THE STAND TO TESTIFY.

THE COURT: VERY WELL.

(THE WITNESS WAS DULY SWORN)

THE CLERK: THANK YOU. PLEASE BE SEATED IN THE WITNESS BOX. SIR, PLEASE STATE YOUR FULL NAME FOR THE RECORD, SPELLING YOUR FIRST AND LAST NAME.

THE WITNESS: JON, J-O-N, SCOTT, H-E-L-S-E-L.

THE COURT: MR. HELSEL, KEEP THAT MICROPHONE RIGHT IN FRONT OF YOU. SPEAK RIGHT INTO IT AND KEEP YOUR

52

1 VOICE UP, PLEASE.

2 MR. ADAIR, YOU MAY PROCEED.

3 MR. ADAIR: THANK YOU, YOUR HONOR.

4

5

JON SCOTT HELSEL

6

CALLED AS A WITNESS ON BEHALF OF THE DEFENDANT, AFTER HAVING

7

BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8

9

DIRECT EXAMINATION

10

BY MR. ADAIR:

11

Q. MR. HELSEL, DO YOU KNOW ERIC BURTON?

12

A. YES, I DO.

13

Q. COULD YOU POINT HIM OUT AND IDENTIFY HIM,

14

PLEASE?

15

A. SITTING RIGHT NEXT TO YOU.

16

THE COURT: INDICATING AND IDENTIFYING MR.

17

BURTON.

18

A. YES, ERIC BURTON.

19

BY MR. ADAIR:

20

Q. MR. HELSEL, COULD YOU INDICATE IN WHAT CONTEXT

21

YOU KNOW MR. BURTON? IN OTHER WORDS, DO YOU LIVE --

22

A. I'M A PROPERTY MANAGER FOR QUINN PROPERTY

23

MANAGEMENT COMPANY IN SAN DIEGO, AND HE RENTED A PROPERTY

24

FROM US OUT IN EL CAJON, 425 EAST MAIN, APARTMENT 5.

25

Q. WERE YOU PRESENT LAST YEAR AT A TIME WHEN HE WAS

26

ARRESTED?

27

A. YES.

[REDACTED]

7 Q. COULD YOU EXPLAIN TO US WHAT YOU SAW OR HEARD?
8 WHAT WAS THE FIRST THING THAT YOU NOTICED THAT SEEMED
9 UNUSUAL.

10 MS. HANNAH: OBJECTION. LEADING.

11 THE COURT: OVERRULED. YOU CAN ANSWER. JUST
12 TELL US WHAT HAPPENED, WHAT YOU SAW.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 THE COURT: WHERE IS THIS IN RELATION TO YOUR
18 APARTMENT?

19 THE WITNESS: I'M IN 6.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 THE COURT: ALL RIGHT. GO AHEAD, MR. ADAIR.
26 BY MR. ADAIR:

27 Q. COULD YOU TELL US HOW MANY UNITS ARE IN THAT?

28 A. THERE'S SIX.

(54)

[REDACTED]

17 Q. HOW FAR AWAY FROM YOU WAS HE AT THE TIME THAT
18 THE OFFICERS ARRESTED HIM?

19 A. HE WAS RIGHT IN FRONT OF ME AT FIRST. THEN THEY
20 MADE HIM STEP OUT, LAY DOWN ON THE BLACKTOP, PUT HIS HANDS
21 BEHIND HIM.

22 Q. HOW FAR WAS HE AWAY FROM YOU AT THE TIME HE WAS
23 LAID DOWN ON THE BLACKTOP?

24 A. TEN FEET.

[REDACTED]

2 Q. WERE YOU STILL WATCHING AT THAT POINT?

3 A. PRETTY MUCH SO, YES.

4 Q. COULD YOU TELL US THE NEXT THING THAT YOU SAW OR
5 HEARD?

6 A. THE YOUNG MAN KEPT OPENING THE DOOR IN APARTMENT
7 5, AND THE ATTENTION WAS DRAWN. THE OFFICER SAW THAT, SO HE
8 WENT OVER THERE AND KNOCKED ON THE DOOR BECAUSE THE KID
9 CLOSED THE DOOR AS HE CAME UP. HE OPENED THE DOOR, AND I
10 GUESS THEY WANTED ACCESS AND THE KID WOULDN'T LET HIM -- OR

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 Q. LET ME INTERRUPT FOR A SECOND AND ASK YOU HOW
17 FAR AWAY FROM YOU WAS THE POLICE CAR THAT MR. BURTON --

18 A. THE POLICE CAR WAS 20 FEET PLUS, MAYBE 25. I

[REDACTED]

[REDACTED]

21 Q. WAS THE NEXT THING THAT HAPPENED?

22 A. I'M NOT SURE WHETHER THE OFFICERS CHANGED OR THE
23 OFFICER. IT'S BEEN A WHILE. ANYHOW, ONE OF THE OFFICERS
24 WENT INTO THE UNIT, BROUGHT THE KID OUTSIDE, AND THEY HAD
25 SOMETHING WITH HIM. [REDACTED], BUT I DIDN'T
26 SEE IT BECAUSE IT WAS WRAPPED.

27 Q. WERE THEY CARRYING SOMETHING THAT WAS WRAPPED?

28 A. SOMETHING, YES.

[REDACTED]

56

1 Q. DID YOU HEAR ANY PART OF THE CONVERSATION
2 BETWEEN MR. BURTON AND THE POLICE OFFICERS AFTER HE WAS PUT
3 INTO -- MR. BURTON WAS PUT INTO THE POLICE CAR?

4 A. NO. ONCE HE WAS IN THE CAR, HE WAS TOO FAR AWAY
5 FROM ME. I KNOW BETTER THAN TO APPROACH THE CAR WHEN
6 SOMEBODY IS IN CUSTODY. STAY OUT OF IT.

7 MR. ADAIR: COULD I HAVE A MOMENT, YOUR HONOR?

8 THE COURT: SURE.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 BY MR. ADAIR:

26 Q. MR. HOW HOLD, COULD YOU DESCRIBE TO THE COURT
27 THE APARTMENT COMPLEX THAT YOU WERE THE MANAGER OF, THE ONE
28 THAT WE HAVE BEEN TALKING ABOUT?

1 A. THERE'S SIX UNITS IN AN 'L' PATTERN. FIRST
2 THERE'S A ONE BEDROOM, AND THEN THERE'S A STUDIO AND THEN
3 THERE'S A LAUNDRY FACILITY AND THEN THERE'S A GARAGE AND
4 THEN THERE'S ANOTHER TWO STUDIOS. AND HIS WAS IN THE CORNER

[REDACTED]

[REDACTED]

7 Q. HOW FAR AWAY FROM YOUR UNIT WAS HIS UNIT?

8 A. 25 FEET MORE.

[REDACTED]

[REDACTED]

[REDACTED]

12 Q. WHEN MR. BURTON WAS ARRESTED BY THE POLICE, WAS
13 HE IN THE PARKING LOT AREA?

14 A. HE WAS STANDING RIGHT IN FRONT OF MY UNIT. HE
15 WAS TALKING TO ME WHEN THEY DROVE UP.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 Q. SO THERE'S NO GARDEN OR ANYTHING LIKE THAT.

[REDACTED]

[REDACTED]

25 A. THEY HAVE PLANTS AND SHRUBBERY OUT IN FRONT OF
26 EACH UNIT.

27 Q. HOW ABOUT HOW FAR FROM THE UNITS?

28 A. WELL, IT'S LOW BELOW THE WINDOW. THE FLOWERS

1 ARE BELOW THE WINDOW.

2 Q. THE PARKING LOT IS SHARED WITH THE GRAND BAR?

3 A. NO. THE GRAND HAS THEIR SIDE. I HAD DESIGNATED
4 FOR TENANTS OVER THERE. [REDACTED]

5 THE PEOPLE IN THE BAR KNEW BECAUSE I WOULD TELL ALEX AND
6 JASON, WHO WERE THE OWNERS OF THE BUSINESS.

7 MR. ADAIR: MAY I HAVE ONE MOMENT, YOUR HONOR.

9 WHEN THE POLICE ARRESTED HIM?

10 A. HE WAS STANDING IN FRONT OF MY UNIT, NO. 6
[REDACTED]
[REDACTED]
[REDACTED]

14 Q. YEAH.

15 A. HE WAS STANDING RIGHT THERE.
[REDACTED]
[REDACTED]
[REDACTED]

19 MR. ADAIR: COULD I HAVE A MOMENT, YOUR HONOR?

20 NO FURTHER QUESTIONS, YOUR HONOR. THANK YOU.

21 THE COURT: ALL RIGHT. MISS HANNAH,

22 CROSS-EXAMINATION.

23 MS. HANNAH: THANK YOU, YOUR HONOR.

24

25 CROSS-EXAMINATION

26 BY MS. HANNAH:

27 Q. MR. HELSEL?

28 A. YES.

59

[REDACTED]

4 Q. DID YOU SEE MR. BURTON MAKE A PHONE CALL?

5 A. [REDACTED]

6 [REDACTED]

7 [REDACTED] I DON'T

8 REMEMBER. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 Q. WHEN THE POLICE ARRIVED --

13 A. WE WERE TALKING AND WE WERE EXCHANGING SOME

14 DIALOGUE. ALL OF A SUDDEN THERE THEY WERE.

15 Q. WHEN THE POLICE ARRIVED, DID THEY CONTACT THE

16 DEFENDANT?

17 A. OH, YES.

18 Q. AND DID YOU OBSERVE THIS OCCURRING?

19 A. YES, RIGHT IN FRONT OF ME.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



60

2 MS. HANNAH: THANK YOU. NOTHING FURTHER.

3 THE COURT: MR. ADAIR, DO YOU HAVE ANY FURTHER
4 QUESTIONS?

5 MR. ADAIR: BRIEFLY, YOUR HONOR.

6

7

REDIRECT EXAMINATION

8 BY MR. ADAIR:

9 Q. MR. HELSEL, WHEN THE POLICE ARRIVED, DID THEY
10 HAVE THEIR GUNS OUT?

11 A. YES.

12 Q. AND THEY HAD THEIR GUNS OUT UNTIL MR. BURTON WAS
13 HANDCUFFED?

14 A. YES.

15 MR. ADAIR: THANK YOU VERY MUCH.

16 THE COURT: THIS ALL HAPPENED PRETTY QUICKLY
17 ONCE THE POLICE ARRIVED ON THE SCENE?

18 A. PRETTY QUICK.

19 Q. THEY TOOK HIM DOWN AT GUNPOINT, THEY PRONED HIM
20 OUT ON THE GROUND?

21 A. YES, BUT HE WASN'T FIGHTING OR ANYTHING.

22 THE COURT: UNDERSTOOD.

23 Q. HOW LONG WOULD YOU ESTIMATE HE WAS ON THE GROUND
24 BEFORE THEY ESCORTED HIM TO ONE OF THE PATROL CARS?

25 A. 15, 20 SECONDS, 30 SECONDS.

[REDACTED]

[REDACTED]

[REDACTED]

~~10~~
~~11~~
~~12~~
~~13~~
~~14~~
~~15~~
~~16~~
~~17~~
~~18~~
~~19~~
~~20~~
~~21~~
~~22~~
~~23~~
~~24~~
~~25~~
~~26~~
~~27~~
~~28~~
13 Q. DO YOU RECALL ANY CONVERSATION -- HEARING ANY
14 CONVERSATION ABOUT SEARCHING MR. BURTON'S APARTMENT OR HIS
15 VEHICLE OR BOTH?

16 A. NO, I DIDN'T HEAR ANYTHING.

17 THE COURT: COUNSEL, ANYTHING FURTHER BASED UPON
18 THE COURT'S INQUIRIES?

19 MR. ADAIR: NO, YOUR HONOR.

20 THE COURT: MISS HANNAH?


21 MS. HANNAH: NO.

22 THE COURT: ALL RIGHT. MR. HELSEL, THANK YOU
23 VERY MUCH FOR BEING WITH US. YOU MAY STEP DOWN. YOU'RE
24 FREE TO GO.

25 THE WITNESS: THANK YOU.

26 THE COURT: MR. ADAIR, DO YOU HAVE FURTHER
27 EVIDENCE TO PRESENT?

28 MR. ADAIR: NO, YOUR HONOR. COULD I HAVE JUST A

 (62)

1 HELP YOU GOD?

2 **OFFICER DON HOLMES,**

3 CALLED BY THE PEOPLE, HAVING BEEN FIRST DULY SWORN, WAS
4 EXAMINED AND TESTIFIED AS FOLLOWS:

5 **THE WITNESS:** I DO.

6 **THE CLERK:** THANK YOU. PLEASE BE SEATED.

7 WILL YOU PLEASE STATE YOUR FULL NAME SPELLING BOTH YOUR
8 FIRST AND LAST FOR THE RECORD.

9 **THE WITNESS:** DON HOLMES. D-O-N, H-O-L-M-E-S.

10 **THE CLERK:** THANK YOU.

11 **DIRECT EXAMINATION**

12 **BY MR. TROCHA:**

13 Q. GOOD MORNING, OFFICER HOLMES.

14 A. GOOD MORNING.

15 Q. YOU'RE ALSO AN OFFICER WITH THE EL CAJON
16 POLICE DEPARTMENT?

17 A. YES, SIR.

18 Q. HOW LONG HAVE YOU BEEN WITH EL CAJON?

19 A. 3 1/2 YEARS.

20 Q. HAVE YOU BEEN WITH ANY OTHER AGENCIES?

21 A. NO.

22 Q. IN YOUR 3 1/2 YEARS EXPERIENCE WITH EL CAJON,
23 HAVE YOU RECEIVED TRAINING IN THE AREA OF EVIDENCE
24 COLLECTION?

25 A. YES, I HAVE.

26 Q. WHAT DOES THAT TRAINING CONSIST OF?

27 A. PROPER EVIDENCE COLLECTION PROCEDURES.

28 DEPARTMENT POLICY RELATING TO HOW WE COLLECT DIFFERENT



2 Q. WOULD THIS TYPE OF EVIDENCE COLLECTION
3 TRAINING REFER TO TAKING INTO CUSTODY SUSPECTS' CLOTHES?

5 Q. AND HOW WOULD YOU GO ABOUT DOING SOMETHING
6 LIKE THAT?

11 THEN WE WOULD HAVE THE PERSON REMOVE EACH ITEM OF
12 CLOTHING SEPARATELY, ~~AND WE WOULD TAKE THE CLOTHING TO THE~~
13 ~~RECORDS SECTION.~~ AND AFTER ALL THE CLOTHING IS
14 COLLECTED, WE ISSUE THEM A PAPER SUIT, WHICH THEY WOULD
15 THEN WEAR. ~~THEY WOULD WEAR THE PAPER SUIT TO THE~~
16 ~~RECORDS SECTION WITH THE CLOTHING.~~

17 Q. IS THIS A STANDARD PROCEDURE IN EVERY TYPE OF
18 CASE?

19 A. [REDACTED], NO.

210 [REDACTED] WOULD THE PROCEEDURE BE
211 [REDACTED] IN COLLECTING
212 [REDACTED] FROM THE OFFICE FOR UNEMPLOYMENT
213 MAY BE [REDACTED] [REDACTED]
214 [REDACTED] [REDACTED] [REDACTED]
215 [REDACTED] [REDACTED]
216 [REDACTED]
[REDACTED]
[REDACTED]

64

~~_____~~
2 Q. YOU ALSO RECEIVED TRAINING, I GUESS, IN
3 PHOTOGRAPHY AND PHOTOGRAPHING VEHICLES, EVIDENCE, AND
4 THOSE TYPES OF THINGS?

5 A. CORRECT.

6 Q. WHAT'S THE PURPOSE OF THAT TRAINING?

7 A. THE PURPOSE? SO WE'RE FAMILIARIZED WITH THE
8 CAMERA EQUIPMENT AND JUST GENERAL UNDERSTANDING OF WHAT
9 PHOTOS WE ARE TO TAKE.

10 Q. ARE YOU TAUGHT TO PHOTOGRAPH CERTAIN THINGS
11 OTHER THAN OTHERS?

12 A. DEPENDING ON WHAT TYPE OF SITUATION IT IS,
~~_____~~

14 Q. IN ESSENCE, DO YOU TRY TO CAPTURE THE SUBJECTS
15 YOU'RE PHOTOGRAPHING OR WHATEVER YOU'RE PHOTOGRAPHING IN
16 ITS MOST ACCURATE LIGHT?

17 A. I WOULD SAY THAT'S FAIR TO SAY.

18 ~~X~~ Q. WERE YOU ON DUTY BACK ON MARCH 19TH OF LAST
19 YEAR?

20 A. YES, I WAS.

21 Q. DID YOU RECEIVE A CALL TO REPORT TO AN ADDRESS
22 ON 425 EAST MAIN STREET?

23 A. YES, I DID.

24 Q. AND THIS IS WITHIN EL CAJON?

25 A. CORRECT.

26 Q. AND THAT'S, OF COURSE, WITHIN THE COUNTY OF
27 SAN DIEGO?

28 A. YES.

~~_____~~ (5)

1 BY MR. TROCHA:

[REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 Q. WERE YOU ABLE TO ASSOCIATE -- WHAT TYPE OF
7 STRUCTURES, IF ANY, ARE AT THIS ADDRESS?

8 A. IT'S AN APARTMENT BUILDING.

9 Q. WERE THERE ANY VEHICLES IN THE PARKING LOT?

10 A. YES, THERE WERE.

11 Q. WERE YOU ABLE TO IDENTIFY ONE THAT BELONGED TO
12 MR. BURTON?

13 A. YES, I DID.

14 Q. AND WHAT TYPE OF VEHICLE WAS THAT?

15 A. [REDACTED]. THE MODEL
16 ESCAPES ME AT THIS POINT IN TIME.

[REDACTED]

[REDACTED]

19 Q. WERE THERE ANY ITEMS IN OR AROUND THE VEHICLE
20 THAT YOU ALSO LATER SEIZED?

21 A. YES.

22 Q. WHAT WERE THOSE ITEMS?

23 A. THERE WAS PAPERWORK ON TOP OF A BLACK
24 BACKPACK, [REDACTED]

25 [REDACTED], AND I COLLECTED THAT.

[REDACTED]

[REDACTED]

[REDACTED]

1 MR. PLUMBER'S IN LIMINE MOTION FOR THE
2 FRUIT-OF-THE-POISONOUS-TREE BASED ON THE MIRANDA
3 VIOLATION THAT HAPPENED PRIOR TO THE 4TH AMENDMENT
4 VIOLATION OF THE UNLAWFUL ENTRY, UNLAWFUL SEARCH AND
5 SEIZURE, [REDACTED]
[REDACTED]

7 I'D LIKE TO CITE CASE PEOPLE VERSUS TURNER,
8 1984 --

9 THE COURT: YOU'RE RELATING NOW -- [REDACTED]
[REDACTED]

12 THE DEFENDANT: [REDACTED]. I'M TALKING ABOUT MIRANDA
13 VIOLATION, WHEREAS I WAS ARRESTED --

14 THE COURT: WE'VE ALREADY RULED THAT YOUR
15 STATEMENTS AREN'T COMING IN.

16 THE DEFENDANT: [REDACTED]
17 FRUIT-OF-THE-POISONOUS-TREE MOTION WHERE PROSECUTION
18 CANNOT BENEFIT INDIRECTLY OR DIRECTLY FROM THE MIRANDA
19 VIOLATION, WHICH HAPPENED PRIOR TO THE UNLAWFUL ENTRY.

20 THE COURT: LET ME STOP YOU RIGHT THERE. I
21 KNOW THE GROUNDS OF THE MOTION. [REDACTED]
22 ATTORNEY WAS INCOMPETENT OR NOT PROPERLY REPRESENTING
23 YOU?

24 THE DEFENDANT: YES. [REDACTED]

25 THE COURT: ALL RIGHT. [REDACTED]

26 [REDACTED] MOST OF THE COMPLAINTS YOU HAVE RAISED
27 RELATE TO ISSUES THAT AROSE BEFORE TRIAL. [REDACTED]
[REDACTED]

1 Q. DID MR. BURTON SAY ANYTHING ELSE?

2 A. NOT THAT I HEARD.

3 MR. ADAIR: THANK YOU. I HAVE NO FURTHER
4 QUESTIONS.

5 THE COURT: MISS HANNAH, ANY REDIRECT?

6 MS. HANNAH: NO, YOUR HONOR.

7 THE COURT: ALL RIGHT. THANK YOU, OFFICER. YOU
8 MAY STEP DOWN.

9 MISS HANNAH, YOUR NEXT WITNESS.

10 MS. HANNAH: THANK YOU. THE PEOPLE CALL AGENT
11 KIRK.

12 (THE WITNESS WAS DULY SWORN)

13 THE CLERK: THANK YOU. PLEASE BE SEATED IN THE
14 WITNESS BOX.

15 WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE
16 RECORD, SPELLING YOUR FIRST AND LAST NAME.

17 THE WITNESS: STEPHEN KIRK, S-T-E-P-H-E-N
18 K-I-R-K.

19 THE CLERK: THANK YOU.

20

21 STEPHEN KIRK

22 CALLED AS A WITNESS ON BEHALF OF THE PROSECUTION, AFTER
23 HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24

25 DIRECT EXAMINATION

26 BY MS. HANNAH:

27 Q. AGENT KIRK, WHERE ARE YOU EMPLOYED?

28 A. POLICE DEPARTMENT IN THE CITY OF EL CAJON.

1 Q. HOW LONG HAVE YOU BEEN SO EMPLOYED?

2 A. 15 YEARS.

3 Q. WERE YOU ON DUTY ON MARCH 19TH OF THE YEAR 2004?

4 A. YES, MA'AM, I WAS.

5 Q. DID YOU RESPOND TO A LOCATION OF 425 EAST MAIN
6 STREET?

7 A. YES, MA'AM.

13

21 THE COURT: PROCEED.

22 BY MS. HANNAH:

23 Q. WHEN YOU ARRIVED AT THAT LOCATION, WHAT DID YOU
24 FIND?

25 A. OFFICER HOLMES AND SERGEANT COIT WERE ALREADY ON
26 THE SCENE. THERE WERE TWO BLACK MALES. I BELIEVE, AT THAT

28 BELIEVE IT WAS A FOUR DOOR, SITTING IN A PARKING SPOT RIGHT

1 IN FRONT OF APARTMENT NO. 5.

2 Q. AND YOU RECALL WHETHER OR NOT THERE WERE ANY
3 OTHER OFFICERS AT THE SCENE WHEN YOU ARRIVED OTHER THAN
4 AGENT COIT AND OFFICER HOLMES OR SERGEANT, EXCUSE ME, COIT?

5 A. THAT'S ALL I REMEMBER WHEN I ARRIVED. I KNOW
[REDACTED]
[REDACTED]

8 Q. WHEN YOU ARRIVED AT THE SCENE, DID THE OTHER
9 OFFICERS HAVE THEIR GUNS OUT OR ANYTHING OF THAT NATURE?

10 A. OFFICER HOLMES HAD HIS GUN OUT, YES.

11 Q. DID YOU EVENTUALLY SEE OFFICER HOLMES OR ONE OF
12 THE OFFICERS PLACE ONE OF THE BLACK MALES INTO HANDCUFFS?

13 A. YES, I DID.

14 Q. DO YOU SEE THE PERSON THAT HE PLACED INTO
15 HANDCUFFS IN THE COURTROOM TODAY?

16 A. YES.

17 Q. CAN YOU POINT THAT INDIVIDUAL OUT AS TO WHERE
[REDACTED]

19 A. HE'S SITTING AT THE DEFENSE TABLE. [REDACTED]

20 [REDACTED] THE BLACK
21 MALE.

22 THE COURT: IDENTIFYING THE DEFENDANT, MR.
23 BURTON.

24 BY MS. HANNAH:

25 Q. AFTER THE DEFENDANT WAS PLACED INTO HANDCUFFS,
26 DID YOU HAVE A CONVERSATION WITH THE DEFENDANT?

27 A. A SHORT CONVERSATION, YES.

28 Q. WHAT WAS THE NATURE OF THAT CONVERSATION?

14

Q.

WHEN YOU ASKED HIM ABOUT THE ^{ALLEGED} WEAPON, ABOUT A

21

A.

I ASKED HIM WHERE THE ^{ALLEGED} WEAPON WAS,

3

A. I ASKED HIM WHERE THE ^{ALLEGED} GUN WAS HE USED IN THE

9

MR. ADAIR: OBJECTION, YOUR HONOR. LEADING.

10

THE COURT: OVERRULED.

12

BY MS. HANNAH:

14 A. I BELIEVE HE WAS SITTING.

11 A. YES, I DID.

26 | A. YES, I DID.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
5 Q. [REDACTED] DID YOU SEARCH
6 THE DEFENDANT'S VEHICLE?

7 A. YES, I DID.

8 Q. AND DID YOU FIND ANYTHING INSIDE OF THE VEHICLE?

9 A. YES, I DID.

10 Q. WAS THE DEFENDANT STILL PRESENT WHEN YOU
11 SEARCHED THE VEHICLE?

12 A. [REDACTED] I THINK HE
13 HAD BEEN PLACED IN A VEHICLE. [REDACTED]
[REDACTED]

15 Q. AGENT KIRK, YOU INDICATED THAT YOU DID SEARCH
16 THE DEFENDANT'S CAR; CORRECT?

17 A. YES.
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

26 Q. WHERE SPECIFICALLY INSIDE THE VEHICLE DID YOU
27 FIND THE ITEMS?

28 A. THEY WERE INSIDE, [REDACTED], A BLACK

1 POUCH INSIDE THE GLOVE BOX.

2 [REDACTED]

3 [REDACTED]

4 Q. DID YOU ALSO PHOTOGRAPH THESE ITEMS?

5 A. YES, I DID.

6 Q. AND THEN DID YOU TAKE THESE ITEMS INTO CUSTODY
7 OR INTO EVIDENCE?

8 A. YES, I DID.

9 MS. HANNAH: THANK YOU. NOTHING FURTHER.

10

11 CROSS-EXAMINATION

12 BY MR. ADAIR:

13 Q. AGENT KIRK --

14 THE COURT: MR. ADAIR, GO AHEAD.

15 BY MR. ADAIR:

16 Q. GOOD MORNING.

17 A. GOOD MORNING, SIR.

18 Q. AGENT KIRK, IT APPEARS IN THIS CASE THAT YOU
19 BASICALLY COLLECTED EVIDENCE?

20 A. YES, I DID.

21 Q. TOOK PHOTOGRAPHS?

22 A. YES, SIR.

23 Q. ALL RIGHT. IS THAT -- WAS THAT YOUR
24 RESPONSIBILITY ON THIS PARTICULAR INCIDENT?

25 A. YES, IT WAS.

26 Q. IS THAT WHAT YOU -- THE FUNCTION THAT YOU
27 NORMALLY PERFORM FOR THE EL CAJON POLICE DEPARTMENT?

28 A. IT'S ONE OF MY FUNCTIONS, YES.

1 Q. ARE YOU ALSO A PATROL OFFICER OR --

2 A. WELL, AT THAT TIME I WAS ACTUALLY ACTING

3 SERGEANT, [REDACTED]
[REDACTED]

5 Q. AT THE TIME THAT YOU ARRIVED ON THE SCENE, WAS
6 MR. BURTON HANDCUFFED?

7 A. HE WAS IN THE PROCESS OF BEING HANDCUFFED, I
8 BELIEVE.

9 Q. SO YOU WERE THERE FAIRLY QUICKLY; CORRECT?

10 A. YES, SIR.

11 Q. DO YOU REMEMBER A SECOND INDIVIDUAL BEING THERE
12 ON THE SCENE THAT WAS NOT A POLICE OFFICER?

13 A. YES.

14 Q. AND WHO WAS THAT OTHER PERSON?

15 A. I DON'T RECALL HIS NAME, BUT THERE WAS ANOTHER
16 BLACK MALE THERE.

17 Q. WOULD IT BE FAIR TO DESCRIBE HIM AS A YOUNGER
18 MALE?

19 A. YES.

20 Q. YOUNGER THAN MR. BURTON?

21 A. HE LOOKED TO BE, YES.

[REDACTED]
[REDACTED]
24 Q. DIDN'T YOU ASK THAT INDIVIDUAL, "WHERE IS THE ^{ALLEGED}
25 GUN?"

[REDACTED]
27 Q. AND REFERRING TO THE YOUNGER BLACK MALE?

28 A. CORRECT.

1 Q. DO YOU REMEMBER THAT YOUNGER INDIVIDUAL STANDING
2 NEAR THE DOORWAY TO THE APARTMENT?

[REDACTED]

12 Q. YOU INDICATED THAT YOU DID SEARCH MR. BURTON'S
13 CAR; CORRECT?

14 A. YES, SIR.

15 Q. COULD YOU DESCRIBE THE INTERIOR OF THE CAR AND
16 CONTENTS IN GENERAL?

17 A. WELL, TYPICAL CAR. [REDACTED]
18 [REDACTED] I DON'T REMEMBER THE EXACT COLOR
19 [REDACTED] WHAT I LOCATED INSIDE THE GLOVE BOX WAS A
20 BLACK POUCH WITH, [REDACTED]

22 Q. DID YOU TAKE PHOTOGRAPHS OF THE INTERIOR OF THE
23 CAR?

24 A. YES, I DID.

[REDACTED]

2 Q. WOULD IT BE FAIR TO SAY THAT THERE WERE A NUMBER
3 OF ITEMS OF CLOTHING IN THE CAR?

4 A. I HAVEN'T REVIEWED THE PICTURE SINCE THE DAY I
5 TOOK THEM. I CAN'T RECALL.

6 Q. DO YOU REMEMBER FINDING ANY INCENSE IN THE CAR?

7 A. IN WHAT?

8 Q. INCENSE. INCENSE IS SUCH AS YOU BURN TO PRODUCE
9 A SMELL, A SCENT?

10 A. I DON'T RECALL FINDING ANYTHING.

11 Q. WAS THERE ALSO A BACKPACK THERE AT THE SCENE?

12 A. [REDACTED] I
13 DON'T RECALL SEEING ONE.

14 Q. DO YOU REMEMBER ANYTHING BEING ON TOP OF THE
15 "HONDA" THAT YOU SEARCHED, PAPER, BACKPACK, ANYTHING?

16 A. ON TOP BEING --

17 Q. ON THE ROOF OF THE CAR.

18 A. I DON'T RECALL.

19 Q. DID YOU RECOVER ANY SUCH ITEMS FROM THE INSIDE
20 THE CAR?

21 A. RECOVER AND TAKE AS EVIDENCE?

22 Q. YES.

23 A. I DON'T BELIEVE SO. I COULD REFER BACK TO MY
24 REPORT TO REFRESH MY MEMORY.

25 Q. COULD YOU TAKE A LOOK AT YOUR REPORT, PLEASE.

26 A. OKAY.

27 Q. DOES THAT REFRESH YOUR MEMORY?

28 A. SOMEWHAT.

False evidence

1 Q. HOW WOULD YOU ANSWER THE QUESTION AT THIS TIME
2 THEN?

3 A. I WOULD HAVE TO SAY I DON'T RECALL TAKING
4 ANYTHING ELSE FROM A BACKPACK.

5 Q. OKAY. DO YOU KNOW WHERE THE CAR IS NOW?

6 A. THE LAST TIME I SAW THE CAR IT WAS AT THE TOW
7 YARD.

8 Q. HOW LONG AGO WAS THAT?

9 A. IT WOULD HAVE BEEN A COUPLE MONTHS AGO.

10 MR. ADAIR: NO FURTHER QUESTIONS. THANK YOU,
11 OFFICER.

12 THE WITNESS: THANK YOU, SIR.

13 THE COURT: MISS HANNAH, ANY REDIRECT?

14 MS. HANNAH: JUST BRIEFLY.

15

16

REDIRECT EXAMINATION

[REDACTED]

[REDACTED]

10 **MR. TROCHA:** THANK YOU, YOUR HONOR.

11 THE PEOPLE WOULD LIKE TO CALL AGENT KIRK.

12 (THE NEXT WITNESS ENTERS THE COURTROOM.)

13 **THE CLERK:** YOU DO SOLEMNLY STATE THAT THE
14 EVIDENCE YOU SHALL GIVE IN THIS MATTER SHALL BE THE
15 TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO
16 HELP GOD?

17 **AGENT STEVEN KIRK,**

18 CALLED BY THE PEOPLE, HAVING BEEN FIRST DULY SWORN, WAS
19 EXAMINED AND TESTIFIED AS FOLLOWS:

20 **THE WITNESS:** I DO.

21 **THE CLERK:** THANK YOU. PLEASE BE SEATED IN
22 THE WITNESS STAND.

23 WILL YOU PLEASE STATE YOUR FULL NAME SPELLING
24 BOTH YOUR FIRST AND LAST FOR THE RECORD.

25 **THE WITNESS:** STEVEN ANDREW KIRK, K-I-R-K.

26 **DIRECT EXAMINATION**

27 **BY MR. TROCHA:**

28 Q. GOOD MORNING, AGENT KIRK.

1 A. GOOD MORNING, SIR.

2 Q. YOU'RE AN AGENT WITH THE EL CAJON POLICE
3 DEPARTMENT?

4 A. YES, I AM.

5 Q. AND HOW LONG HAVE YOU BEEN AN OFFICER OF THE
6 EL CAJON POLICE DEPARTMENT?

7 A. 15 YEARS.

8 Q. DID YOU WORK FOR ANY OTHER AGENCIES OTHER THAN
9 EL CAJON?

10 A. NO, I HAVE NOT.

11 Q. YOU RECEIVED TRAINING ALSO IN THE AREA OF
12 EVIDENCE COLLECTION IN RELATION TO CRIMINAL
13 INVESTIGATIONS?

14 A. YES, I DID.

15 Q. WHAT DOES THAT TRAINING CONSIST OF?

16 A. PHOTOGRAPHING, DOCUMENTING CRIME SCENES,
17 COLLECTING BLOOD SAMPLES, DIFFERENT TYPES OF EVIDENCE AT
18 THE SCENES.

19 Q. ARE THERE CERTAIN DIFFERENCES WHEN IT COMES TO
20 COLLECTING EVIDENCE FROM A SCENE THAT MAY BE AN
21 AUTOMOBILE?


22 A. THAT MAY WHAT?

23 Q. MAY BE AN AUTOMOBILE OR A CAR.

24 A. SOME SUBTLE DIFFERENCES.

25 Q. SUCH AS?

26 A. WELL, PHOTOGRAPHING TECHNIQUES ARE A LITTLE
27 DIFFERENT WITH THE LIGHTING AND SUCH LIKE THAT ON CARS.



[REDACTED]

15 Q. GOING BACK TO MARCH 19TH OF LAST YEAR, WERE
16 YOU ON DUTY?

17 A. YES, I WAS.

18 Q. DID YOU RESPOND TO A CALL TO REPORT TO 425
19 EAST MAIN STREET IN EL CAJON?

20 A. YES, I DID.

[REDACTED]

28 Q. DID YOU CONTACT A PERSON THERE BY THE NAME OF

1 ERIC BURTON?

2 A. YES, I DID.

12 BY MR. TROCHA:

13 Q. THE HYUNDAI THAT YOU PREVIOUSLY DESCRIBED,
14 WERE YOU ABLE TO DETERMINE WHO IT BELONGED TO?

15 A. YES, I WAS.

16 Q. AND WHO DID THE BELONG TO?

17 A. MR. BURTON.

18 Q. DID YOU HAVE OCCASION TO SEARCH THIS CAR?

19 A. YES; I DID.

20. WHERE DID THIS SEARCH TAKE PLACE?

21 A. RIGHT IN FRONT OF MR. BURTON'S APARTMENT WHERE

23 Q. AT THE SCENE

24. A. YES

25 Q. DURING YOUR SEARCH DID YOU TAKE PHOTOGRAPHS OF
26 THE AREA SEARCHED IN THE CAR?

27 A. YES, I DID.

28 Q. DID YOU SEARCH THE GLOVE COMPARTMENT OF THIS

1 Q. SO FOCUSING YOUR ATTENTION NOW ON TO PEOPLE'S

2 [REDACTED]
3 [REDACTED]
4 [REDACTED], PHOTO OF BLACK NYLON
5 ZIPPERED POUCH, WAS MARKED FOR
6 IDENTIFICATION.)

7 [REDACTED], PHOTO OF CLOSED RED BOX
8 [REDACTED]
9 [REDACTED], PHOTO OF OPENED RED BOX
10 [REDACTED] WAS MARKED FOR IDENTIFICATION.)

11 [REDACTED] PHOTO OF OPENED BLACK
12 DRAWSTRING POUCH, WAS MARKED FOR
13 IDENTIFICATION.)

14 [REDACTED], PHOTO OF BLACK NYLON
15 ZIPPERED POUCH, BLACK DRAWSTRING POUCH, AND
16 HEALTHSOURCE ID CARD, WAS MARKED FOR
17 IDENTIFICATION.)

18 [REDACTED] PHOTO OF HEALTHSOURCE
19 ID CARD, WAS MARKED FOR IDENTIFICATION.)

20 THE WITNESS: 100 WOULD BE THE BLACK ZIPPERED
21 POUCH CONTAINING THE ITEMS I PREVIOUSLY DESCRIBED.

22 BY MR. TROCHA:

23 Q. AND THE OTHER FIVE EXHIBITS ARE WHAT WAS FOUND
24 INSIDE THIS POUCH?

25 A. YES.

26 Q. IN ADDITION, THIS IS THE BLACK LEATHER POUCH

27 [REDACTED]
28 A. THAT'S CORRECT.

1 Q. [REDACTED]
2 [REDACTED], PHOTO OF HEALTHSOURCE
3 ID CARD, WAS MARKED FOR IDENTIFICATION.)

4 [REDACTED] PHOTO OF CLUB SYCUAN
5 CARD [REDACTED]

6 THE WITNESS: THOSE ARE THE TWO FORMS OF THE
7 IDENTIFICATION I FOUND INSIDE THE NYLON POUCH.

8 BY MR. TROCHA:

9 Q. FORTUNATELY, WE ALSO HAVE A BLOWUP OF THIS.
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

14 Q. SHOWING YOU WHAT'S BEEN MARKED AS PEOPLE'S
15 [REDACTED] IT'S FOUR PHOTOGRAPHS LABELED A THROUGH H.
16 [REDACTED] PHOTOBOARD WITH EIGHT
17 PHOTOS, WAS MARKED FOR IDENTIFICATION.)

18 BY MR. TROCHA:

19 Q. CAN YOU SEE THAT OKAY?

20 A. YES, I CAN.

21 Q. [REDACTED] IS THIS THE INTERIOR OF
22 THE CAR AS YOU FOUND IT?

23 A. YES.

24 Q. AND PEOPLE'S B IS THE GLOVE COMPARTMENT AS YOU
[REDACTED]

26 A. THAT'S CORRECT.

27 Q. AND THE REST OF THESE ARE THE PHOTOS OF THE
28 POUCH ITSELF AND WHAT WAS FOUND INSIDE THE POUCH,

1 CORRECT?

2 A. YES, SIR.

3 Q. YOU SEIZED THE ITEMS DEPICTED IN C, D, E, F,
4 G, AND H INTO EVIDENCE?

5 A. YES, I DID.

6 Q. SHOWING YOU NOW WHAT'S BEEN MARKED AS PEOPLE'S
7 152.

8 (PEOPLE'S EXHIBIT 152, BLACK NYLON ZIPPERED
9 POUCH, WAS MARKED FOR IDENTIFICATION.)

10 BY MR. TROCHA:

11 Q. DO YOU RECOGNIZE PEOPLE'S 152?

12 A. YES, I DO.

13 Q. AND WHAT IS IT?

14 A. IT'S THE BLACK ZIPPERED NYLON POUCH THAT WAS
15 INSIDE THE GLOVE BOX.

16 Q. ASIDE FROM THE FACT THAT IT'S NOW EMPTY, DOES
17 IT APPEAR TO YOU IN THE SAME CONDITION THAT IT APPEARED
18 ON THE DAY YOU SEIZED IT?

19 A. YES, IT DOES.

20 Q. I NOTE THERE'S A LOCK ON THE POUCH, CORRECT? ←

21 A. THAT'S CORRECT.

22 Q. WAS THAT LOCK THERE WHEN YOU FIRST FOUND IT?

23 A. YES, IT WAS.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8 Q. FINALLY, SHOWING YOU WHAT'S BEEN MARKED AS
9 PEOPLE'S 160 AND 161; 160 REFERRING TO THE POUCH, [REDACTED]

11 (PEOPLE'S EXHIBIT 160, BLACK DRAWSTRING POUCH,
12 WAS MARKED FOR IDENTIFICATION.)
13 [REDACTED], 40 ROUNDS OF
14 .22-CALIBER AMMUNITION, WAS MARKED FOR
15 IDENTIFICATION.)

16 BY MR. TROCHA:

17 Q. CAN YOU DESCRIBE WHAT IS CONTAINED WITHIN THAT
18 EXHIBIT?

19 A. THAT'S THE BLACK DRAWSTRING POUCH AND
20 AMMUNITION THAT WAS LOCATED INSIDE THE PREVIOUS EXHIBIT,
21 THE ZIPPERED POUCH.

22 Q. REFERRING TO PEOPLE'S 152?

23 A. THAT'S CORRECT.

24 Q. NOW, IN THAT EXHIBIT, [REDACTED]

25 [REDACTED] WHEN YOU FOUND THOSE ITEMS IN
26 PEOPLE'S 152, WHERE WERE BOTH EXHIBITS IN RELATION TO
27 EACH OTHER?

28 A. THE ROUNDS WERE INSIDE OF THE DRAWSTRING

1 POUCH.

2 Q. AND THE DRAWSTRING POUCH WAS INSIDE THE
3 ZIPPERED POUCH?

4 A. THAT'S CORRECT.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 WITHIN THAT POUCH?

16 A. YES, [REDACTED]

17 Q. AND HOW MANY ROUNDS WERE CONTAINED?

18 A. 40.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 Q. DOES THIS APPEAR TO BE SOMETHING THAT YOU
2 WOULD GET FROM SYCUAN CASINO?

3 A. YES, IT IS.
4 [REDACTED]
5 [REDACTED]

6 Q. FOCUSING YOUR ATTENTION ON TO PEOPLE'S 154.

7 A. YES.

8 Q. WHAT IS PEOPLE'S 154?
[REDACTED]
[REDACTED]

11 Q. PEOPLE'S 162 NOW.
[REDACTED]
[REDACTED]

14 Q. AND THESE THREE THINGS WERE FOUND WITH THE
15 BULLETS, THE BOX OF BULLETS, AND THE BLACK POUCH INSIDE
16 THE BLACK ZIPPERED POUCH?

17 A. THAT'S CORRECT.

18 Q. IN SEARCHING THE CAR DID YOU FIND ANY EMPTY
19 SHELL CASINGS?

20 A. NO, I DID NOT.

21 Q. SPECIFICALLY, DID YOU SEARCH THE AREA OF THE
22 DRIVER'S SIDE; PULLED THE SEAT, THE FLOORBOARDS, AND
23 POPPED THE DOOR POCKET?

24 A. YES, I DID.

25 Q. DID YOU FIND ANY EMPTY SHELL CASINGS IN THAT
26 AREA?

27 A. NO, I DID NOT.

28 Q. THANK YOU, OFFICER.

94

argument

absence or denial of counsel

U.S. Cal 1966 - Independent of any other constitutional proscription, preventing attorney from consulting with client is violation of 6th amendt. right to assistance of counsel and excludes any statement obtained in it's wake. U.S. Cal. Const. amendt. 6.

Miranda v. Arizona 86 S. Ct. 1602, 384 US 436

US Cal 1966

Presence of counsel in cases presented would have been adequate protective device necessary to make process of police interrogation conform to dictates of privilege. Its presence would have insured that statements made in government establish atmosphere were not product of compulsion U.S. Cal. Const. amendt. 5, 6.

C.A. 9 (Cal) 2004 Invocation of counsel sufficient to trigger protection of Edwards requires at minimum some statement that can reasonably be construed to be an expression of desire for assistance of attorney

U.S. Cal. Const. amendt. Paulino v. Castro, 371 F. 3d 1083

Ca. Cal 2000 There is no good-faith exception to the exclusionary rule for police who do not act in accordance with governing law. U.S. Cal. Const. amendt. 4 US v. Twigg 222 F. 3d 1092

4

0125

1 the product of compulsion subtle or otherwise." (Cited, quoting Randall v. Chief of Police, 94 Cal. 2d 958 (1963), after
 2 the assertion of the privilege, the defendant, with the help of police, initiated attempts to
 3 interrogate him." (Cited, quoting 884) Mr. Burton invoked his right to counsel but he continued to
 4 questioned.

III.

8 ~~ALL EVIDENCE OBTAINED AS A RESULT OF EITHER CUSTOMER INTERVIEW OR~~
 9 ~~MISFEASANCE OR NEGLIGENCE OF THE POLICE, FRUIT OF THE POISONOUS TREE~~

11 "The essence of a provision forbidding the acquisition of evidence in a certain way is that not
 12 merely evidence so acquired shall not be used before the Court, but that it shall not be used at
 13 all." (Silverthorne Lumber Co. v. United States (1920) 251 U.S. 385) Not only is it well established
 14 that evidence which is illegally obtained cannot be used (Angelo v. U.S. (1925) 269 U.S. 20), but
 15 Mapp v. Ohio (1961) 367 U.S. 643 and Wong-Sun v. United States (1963) 371 U.S. 471 instruct us
 16 that the "fruits" resulting from evidence seized or leads resulting from the evidence must also be
 17 excluded.

18 When it appears that the evidence has been unlawfully acquired, the heavy burden of
 19 establishing the admissibility of the evidence on the theory that it would have been acquired by the
 20 police independent of the unlawful acquisition rests on the prosecution)People v. Superior Court of
 21 Alameda County (1978) 80 Cal 3d 665

~~CONCLUSION~~

24 ~~Mr. Burton cooperated in the investigation, supplied the gun, bullets and other evidence seized~~
 25 ~~from his home, as well as the notes, reports and the audio and video tapes of his statements to the police~~

27
 28 *Eue Burton Defendant*

96 X 5-23-05

argument continued.

0129

upon arrival at the E.C. Police Station on 19 MARCH 04 at approx 1600. The defendant invoked his 6th and 5th amendment rights clearly to officer Holmes his arresting officer as officer Holmes testified at the 1538.5 suppression hearing.

CA 9 (Cal) 2004 Miranda warnings do not suffice to purge the taint of police conduct that violates the 4th amendment. U.S.C.A. Const. amend 4 U.S. Crawford, 372 F.3d, 1048

Ca Cal 2004. all evidence found in house search conducted with anticipatory warrant that was constitutionally invalid for failure to list triggered event, and all statements made by suspect at time of search were excludible, since all occurred either during illegal entry or as direct result of it, regardless of whether search ultimately might have been conducted in a manner consistent with valid warrant application and regardless of whether officers possessed curative documents during search U.S.C.A. Const. amend 4. U.S.V. Khrubis, 379 F.3d 1072

Ca 9 Cal 1993. Physical evidence and statements obtained after person is under formal arrest or has been removed from place of temporary detention to custodial surroundings are inadmissible unless probable cause existed for arrest U.S.C.A. Const. amend 4 U.S.V. Woods, 720 F.2d 1022.

Police Conduct Constitutes Detention rather than consensual encounter if reasonable person in defendant's position would have believed he was not free to leave; encounter was invalid detention. Wilson v. Superior Court (1993) 34c. 3d 777.

Q7

1 ERIC BURTON?

2 A. YES, I DID.

3 Q. DO YOU SEE MR. BURTON HERE IN COURT TODAY?

4 A. YES, I DO.

5 Q. COULD YOU TELL US WHERE HE IS SITTING AND WHAT
6 HE'S WEARING?

7 A. HE'S SITTING DIRECTLY ACROSS FROM ME TO YOUR
8 LEFT, WEARING A WHITE SHIRT AND GLASSES.

9 MR. TROCHA: YOUR HONOR, MAY THE RECORD
10 REFLECT THE WITNESS HAS IDENTIFIED THE DEFENDANT?

11 THE COURT: IT WILL.

12 BY MR. TROCHA:

13 Q. THE HYUNDAI THAT YOU PREVIOUSLY DESCRIBED,
14 WERE YOU ABLE TO DETERMINE WHO IT BELONGED TO?

15 A. YES, I WAS.

16 Q. AND WHO DID THE BELONG TO?

17 A. MR. BURTON.

18 Q. DID YOU HAVE OCCASION TO SEARCH THIS CAR?

19 A. YES, I DID.

20 Q. WHERE DID THIS SEARCH TAKE PLACE?

21 A. RIGHT IN FRONT OF MR. BURTON'S APARTMENT WHERE
22 THE PEOPLE WERE PARKED.

23 Q. AT THE SCENE?

24 A. YES.

25 Q. DURING YOUR SEARCH DID YOU TAKE PHOTOGRAPHS OF
26 THE AREA SEARCHED IN THE CAR?

27 A. YES, I DID.

28 Q. DID YOU SEARCH THE GLOVE COMPARTMENT OF THIS

0130

argument cont.

Ca. 9 Cal 1971 assuming a valid basis for arrest, an illegal method of execution for example an unlawful forcible entry can result in the exclusion of any evidence obtained as a result of the officers illegal conduct. U.S. v. Cisneros, 448 F.2d. 298

Ca. 9 (Cal) 2001 Murder defendants Sixth Amendment right to counsel was violated by the admission of evidence that was procured by a government agent who deliberately elicited incriminating information from defendant U.S. CA Const. amend 6. Brown v. Lindsey 16 Fed. appx.

Ca. 9 (Cal) 2004 - Invocation of counsel sufficient to trigger protection of Edwards requires at minimum some statement that can reasonably be construed to be an expression of desire for assistance of attorney U.S. CA Const. amend 5 Paulino, Castro 371 F.3d 1083

ca 9 Cal 2002 Government agents must cease an interrogation whenever an arrestee indicates in any manner that he wishes to remain silent, and when an assertion is ambiguous, agent may not continue the interrogation without at least clarifying the assertion U.S. v. Murray Ellis, 39 Fed. appx 598.

Law Rev. 1951 Right to resist illegal arrest 39 C.L.R. 96.111.

U.S. Cal 1966 Presence of counsel in case presented would have been adequate protective device necessary to make process of police interrogation conform to details of public policy, his presence would have insured that statements made (cont.) on next page.

@9

0131

~~Cont. from previous page~~
 in government established atmosphere were not
 product of compulsion U.S.C.A. Const. amend 5, 6,
 U.S. Cal 1971. Subjective good faith belief would
 not in itself justify either arrest of person
 mistakenly believed to be person police had
 probable cause to arrest or search of apartment
 in which arrest took place. Hill v. California
 915 CT. 1106, 401 U.S. 797 286 Ed. 2d. 484

U.S. Cal 1963 Quantum of information which
 constitutes "probable cause" - evidence which
 would warrant a man of reasonable caution
 in belief that felony has been committed must
 be measured by facts of particular case in which
 legality of arrest is questioned Wong Sun v. U.S. 93 Ct 407

U.S. Cal 1966 Independent of any other constitutional
 proscription, preventing attorney from consulting
 with client is violation of Sixth Amendment right
 to assistance of counsel and excludes any statement
 obtained in its wake U.S.C.A. Const. Amend 6
 Miranda v. Arizona 86 SCt. 1602 384 U.S. 436.

Ca 9 (Cal) 2000 - Though passenger lacked standing to
 challenge search of car directly, if he could establish that
 initial stop of the car violated the fourth amendment
 then the evidence that was seized as a result of that
 stop would be subject to suppression as "fruit of the
 poisonous tree." U.S. Ca. Const. Amend 4. U.S. V. Willey
 222 F 3d 1092

Ca 9 (Cal) 1993 In addition to evidence obtained
 directly through violation of 4th amend. "fruit" of such
 illegal conduct must also be excluded from trial
 U.S. Ca. Const. Amendt. 4.
 Agency misconduct a basis for suppression of evidence (1995)
 11 Cal. W.L. Rev. 373

~~100~~ Error 100

4

ALSO, THERE WAS A MOTION THAT I WANTED TO FILE

6

7

8

9

10

11

13

TROMBETTA DISMISSING DUE TO LOSS AND DESTRUCTION OF THE ^{ALLEGED}
CRIME SCENE ^{PHOTOGRAPHS}

16

THAT I MENTIONED. THAT'S GROUNDS FOR DISMISSAL,

18

SPOILATION?"

22

OH, ONE OTHER THING. I BELIEVE, BECAUSE I

23

24

25

THAT I ALSO BELIEVE THAT THERE WAS A 2ND AMENDMENT VIOLATION